TEXAS REGISTER

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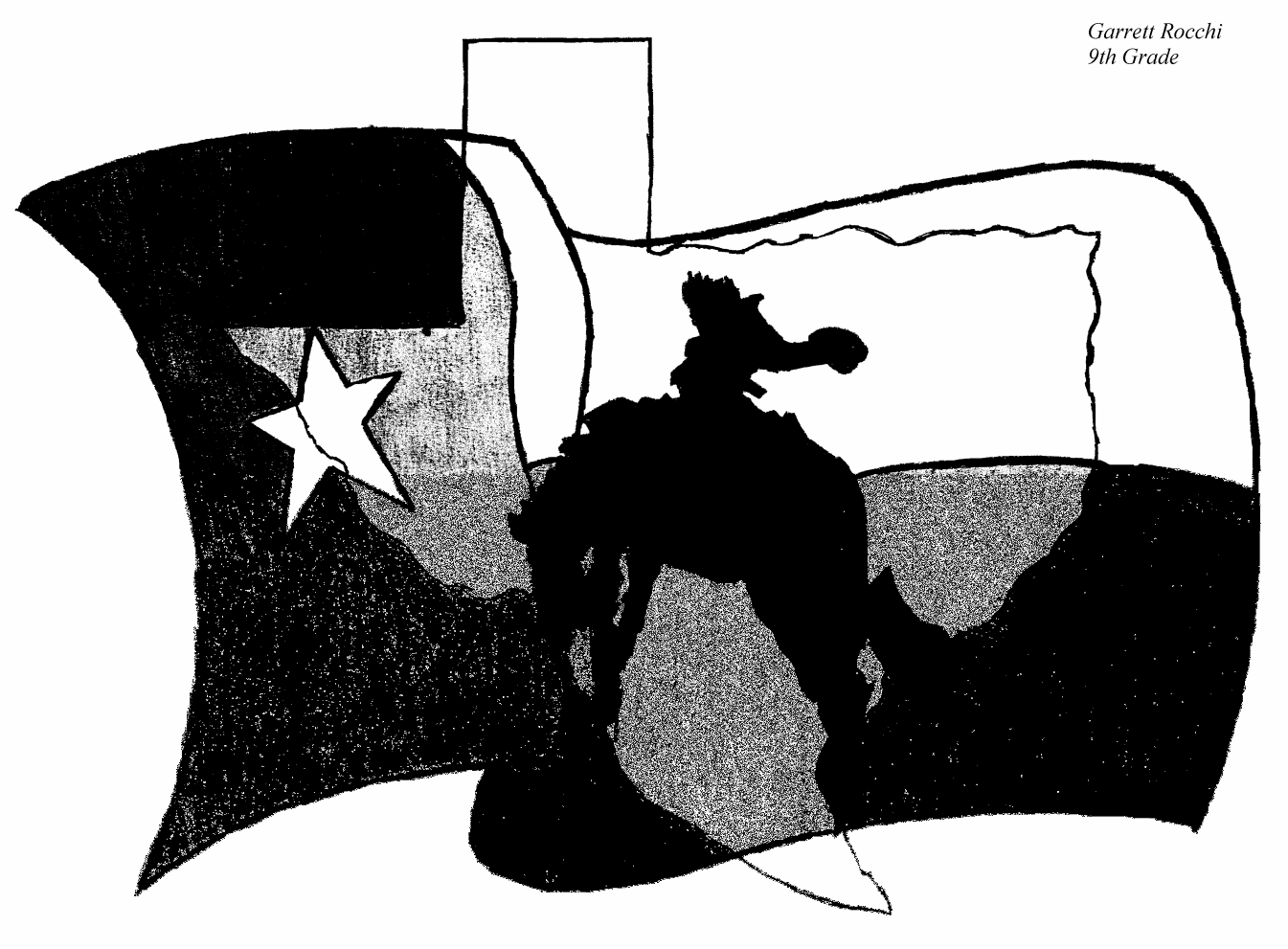

Garrett Rocchi
9th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinion

RQ-0588-GA

Requestor:

The Honorable James M. Kuboviak

Brazos County Attorney

300 East 26th, Suite #325

Bryan, Texas 77803

Re: Whether certain business entities are eligible for exemption from ad valorem taxation under section 25.07, Tax Code (RQ-0588-GA)

Briefs requested by July 18, 2007

RQ-0589-GA

Requestor:

The Honorable Jim Keffer

Chair, Committee on Ways & Means

Texas House of Representatives

P.O. Box 2910

Austin, TX 78768-2910

Requestor:

The Honorable Byron Cook

Chair, Committee on Civil Practices

Texas House of Representatives

P.O. Box 2910

Austin, TX 78768-2910

Re: Scope of the authority of the Office of Speaker of the Texas House of Representatives (RQ-0589-GA)

Briefs requested by July 20, 2007

RQ-0590-GA

Requestor:

The Honorable Jana Duty

Williamson County Attorney

405 M.L.K. Street, Box 7

Georgetown, Texas 78626

Re: Whether a county that chooses to operate under subchapter C of chapter 111, Local Government Code, may appoint its county judge as its county budget officer (RQ-0590-GA)

Briefs requested by July 23, 2007

RQ-0591-GA

Requestor:

Mr. Wayne Thorburn, Administrator

Texas Real Estate Commission

P.O. Box 12188

Austin, Texas 78711-2188

Re: Whether an applicant for a home inspector license is required to carry general liability insurance, professional liability insurance, or both (Request No. 0591-GA)

Briefs requested by July 25, 2007

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200702687
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 27, 2007

♦ ♦ ♦

Opinion No. GA-0552

The Honorable Richard Clark

Yoakum County Criminal District Attorney

Post Office Box 359

Plains, Texas 79355

Re: Whether a county may own or operate a medical clinic in an adjacent county without the adjacent county's consent (RQ-0560-GA)

S U M M A R Y

A county may purchase or lease a medical clinic in an adjacent county without the adjacent county's consent under section 263.022(c) of the Health and Safety Code if the county commissioners court determines that the acquisition is "necessary for hospital purposes" and that the expenditure of county funds serves a county purpose. TEX. HEALTH & SAFETY CODE ANN. §263.022(c) (Vernon 2001); *see* TEX. CONST.

arts. III, §52(a); VIII, §9(b). Once acquired, the hospital's board of managers may manage the facility, personnel, and patients consistently with legal requirements. *See* TEX. HEALTH & SAFETY CODE ANN. §263.046(a) (Vernon 2001).

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200702688

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 27, 2007

♦ ♦ ♦

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY PREPAREDNESS COMMISSION

SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §§4.30 - 4.40

The Office of the Governor, Texas Military Preparedness Commission (Office) proposes new Chapter 4, Subchapter B, §§4.30 - 4.40, setting forth rules of the Defense Economic Adjustment Assistance Grant Program (Program).

The new rules are proposed because Senate Bill 1956 of the 80th Legislature updated Texas Government Code, Chapter 486 to reflect the current status of the Program under the Office. The new rules will replace previous rules proposed for repeal in this issue of the *Texas Register.* The new rules are necessary to accurately reflect current law and to reflect current program practices.

Proposed §4.30 sets forth the background and definitions of the program.

Proposed §4.31 sets forth the time limit in which grant funds must be expended.

Proposed §4.32 sets forth the eligibility requirement for an entity to apply for funds.

Proposed §4.33 provides the types of acceptable source documentation.

Proposed §4.34 sets forth maximum and minimum grant award amounts.

Proposed §4.35 sets forth the documentation requirements for the application.

Proposed §4.36 sets forth the processing and review of applications.

Proposed §4.37 sets forth the availability of funds.

Proposed §4.38 sets forth the Awardee responsibilities.

Proposed §4.39 sets forth the Commission's responsibilities.

Proposed §4.40 sets forth the reporting responsibilities of the grant recipient.

Al Casals, Executive Director of the Office, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rules.

Mr. Casals has also determined that each year of the first five years that the rules are in effect, the public will benefit from a better understanding of the management of the Office and the Program. There will be no effect on small businesses. There is no anticipated economic cost to persons and no private property rights are affected by the new rules.

Comments on the proposed rules may be submitted within 30 days of the publication of this notice to Michael D. Bryant, Assistant General Counsel, 1100 San Jacinto, or P.O. Box 12428, Austin, Texas 78711-2428. Comments may be faxed to Mr. Bryant at (512) 463-1932 or submitted electronically to *michael.bryant@governor.state.tx.us* within 30 days.

The new rules are proposed under Texas Government Code §486.002(d) which authorizes the Office to adopt rules necessary for the Program and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 486, creating the Defense Economic Adjustment Assistance Grant Program, is affected by the proposed rules.

§4.30. Introduction and Purpose.

(a) Background. The Texas Defense Economic Adjustment Assistance Grant Program was authorized by the 75th Legislature to provide state funds to assist communities that have been adversely impacted by decreased defense expenditures and defense worker employment. Subsequently, the 79th Legislature amended the program to include defense communities that have been positively impacted. The program provides affected municipalities, counties, public junior college districts, a campus or extension center of the Texas State Technical College System, or regional planning commission access to state funding. The funds may be used for the purpose of acquiring federal grant assistance or for sharing in the costs of property purchases from the United States Department of Defense or its designated agent, new construction, rehabilitation, or renovation of facilities or infrastructure, the purchase of capital equipment or project related insurance. If the grantee is a public junior college or technical college, grant proceeds may be used to purchase or lease equipment to train defense workers whose jobs have been threatened or lost.

(b) The primary goal of the program is to increase employment opportunities for dislocated defense workers and residents of adversely or positively affected defense communities and reuse vacated property as efficiently as possible.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Awardee--The local governmental entity whose application is approved by the governing board.

(2) Defense worker--

(A) an employee of the United States Department of Defense, including a member of the armed forces and a government civilian worker;

(B) an employee of a government agency or private business, or entity providing a Department of Defense related function, who is employed on a defense facility;

(C) an employee of a business that provides direct services or products to the Department of Defense and whose job is directly dependent on defense expenditures;

(D) an employee of a local, state or federal agency that provides direct services through contract or memorandum of agreement or an employee of a private business that provides direct services, supplies or equipment under a government contract or purchase agreement to the Department of Defense; or

(E) an employee or private contractor employed by the United States Department of Energy working on a defense or Department of Energy facility in support of a Department of Defense related project.

(3) Defense worker job--

(A) a Department of Defense authorized permanent position, such as a position contained on the appropriate unit manning documents; or

(B) a position held or occupied by one or more defense workers for more than 12 months.

(4) Commission--Texas Military Preparedness Commission.

(5) Executive Director--The executive director of the Texas Military Preparedness Commission or his designee.

(6) Financial partners--Federal and state agencies, private and public non-profit foundations, local taxing authorities, and private investors who agree to provide money for a project eligible for funding under this grant.

(7) Fiscal year--The State of Texas fiscal year, September 1 through August 31.

(8) Governing board--The Commissioners of the Texas Military Preparedness Commission.

(9) Local governmental entity--A municipality, county, public junior college district, campus or extension center of the Texas State Technical College System, or regional planning commission.

(10) Panel--The Defense Economic Adjustment Assistance Panel, a group of at least three and not more than five professional full-time employees from within the Governor's Office, who evaluate grant applications and make grant award recommendations to the governing body of the Texas Military Preparedness Commission.

(11) Public junior college--A public junior college district within the State of Texas, all or part of which is located in an adversely or positively affected defense community.

§4.31. Program Coverage.

State funds provided under the Defense Economic Adjustment Assistance Grant Program must be expended not later than the end of the second full fiscal year after the fiscal year in which the grant was awarded.

§4.32. Eligibility for Funds.

(a) A local governmental entity is eligible for a grant under this program if the Commission determines that it represents an adversely or positively affected defense community that requires assistance because of a significant loss or gain of defense worker jobs attributed to the following event(s):

(1) the proposed or actual establishment, realignment, or closure of a defense facility;

(2) the cancellation or termination of a United States Department of Defense contract or the failure of the Department of Defense to proceed with an approved major weapons system program;

(3) a publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect the community;

(4) the closure or a significant reduction of the operations of a defense facility as the result of a merger, acquisition, or consolidation of a defense contractor operating the facility; or

(5) the gain of new or expanded military missions and defense workers, including military and civilian personnel, as a result of a Base Realignment and Closure.

(b) The loss of defense worker jobs is considered significant if, within the jurisdiction of the local governmental entity applying for the grant, a direct loss of defense worker jobs meets or exceeds the following:

(1) 2,500 defense worker jobs in any area of the municipality or county that is located in an urbanized area of a metropolitan statistical area as defined by the United States Census Bureau;

(2) 1,000 defense worker jobs in any area of the municipality or county that is not located in an urbanized area of a metropolitan statistical area as defined by the United States Census Bureau; or

(3) a defense worker job loss of one percent of the jobs in the municipality or county. The percentage of job loss is arrived at by dividing the number of defense worker jobs lost or projected to be lost by the total civilian employment in the municipality or county.

(c) The local governmental entity making application for the grant must provide adequate documentation of defense worker job loss during the period between the beginning of the federal fiscal year during which the event described in subsection (a) of this section occurred and the date that the event is substantially complete. In order to establish eligibility, this documentation must include:

(1) defense worker baseline data representing the number of defense workers employed during the fiscal year of the event described above;

(2) number of defense worker jobs lost during the period between the fiscal year that the event was announced and the date the event is substantially complete; and

(3) total number of people currently employed within the jurisdiction making application.

§4.33. Documentation.

Information from Department of Defense manpower or personnel records, socio-economic impact studies and Environmental Impact Statements, United States Census Bureau, Department of Labor, or Texas Workforce Commission reports or statistics are considered possible acceptable source documents. Other data provided by the local governmental entity and approved by the Commission may also serve as appropriate documented evidence of defense worker job loss or gain.

§4.34. Maximum and Minimum Awards.

(a) Amount. The minimum amount of award will be $50,000. The maximum amount of award will be $2 million.

(b) Percentage. The state may provide up to:

(1) 50% of the amount of matching money or investment that the local governmental entity is required to provide for acquiring federal grants;

(2) 50% of the local governmental entity's investment for qualifying redevelopment projects; or

(3) in cases where the local governmental entity demonstrates to the Commission that resources are not available because of a limited local governmental entity budget, 80% of the amount of matching money or investment required.

(c) Certification.

(1) Local governmental entities are encouraged to acquire financial assistance for eligible development projects from a variety of sources, including federal, state, local and private/public foundations. The Chief Financial Officer of the local governmental entity or the local governing body making application will provide certification demonstrating reasonable local community efforts to acquire funding from other sources when the state is the only other financial partner.

(2) Provision has been made to assist local communities unable, due to limited budget or resources, to provide 50% of the amount of matching money or investment required. Under these circumstances a local governmental entity may be eligible to receive a grant of 80% of the amount of matching money or project investment required. In making application under this provision, the Chief Financial Officer or the local governing body making application will certify that local community budget and resources are not adequate or available and provide specific information on local efforts to secure adequate funding. Justification should include an overview of the status of development sales tax efforts and bond authority.

§4.35. Application for Funds.

(a) The Commission may develop a formal application form to be included in the formal application process to assist in the evaluation of the grant submission. The application may require certain attachments and certifications.

(b) At a minimum the application for funds will include:

(1) a summary overview of the use of the funds:

(A) a general description of the project to be financed;

(B) an analysis of the importance of the project in the overall reuse or redevelopment plan of the defense site and the surrounding community;

(C) the total amount of state grant assistance required and partners involved in financing the project, along with their respective shares; and

(D) the total number of jobs to be created or retained as a result of the project.

(2) a brief summary of the event(s) that qualify the local government, under the eligibility criteria described above, to apply for the grant program; and

(3) an impact statement detailing the adverse or positive effect caused by the event(s) described in §4.32(a) of this title (relating to Eligibility for Funds) on the local governmental entity to include:

(A) a brief analysis of the loss or gain of defense worker jobs and the impact of job loss or gain on total employment within the governmental entity, to include total number of defense worker jobs lost or gained or predicted to be lost or gained and current and projected changes in the unemployment rate;

(B) an analysis of the impact of the event on the economy of the community or region; and

(C) a completed Environmental Impact Statement, if available.

(4) a detailed description of the projected use of funds to allow determination of project eligibility for funding to include, as appropriate:

(A) a preapplication for federal funds, if state funds are to be part of a local share. It is not necessary to receive final approval for federal grants to apply for state funds under this program;

(B) a description of property to be purchased from the Department of Defense or its agent;

(C) a description of new construction, rehabilitation or renovation of facilities or infrastructure;

(D) a description of capital equipment to be purchased or a description of equipment to be purchased or leased for training purposes; and

(E) a description of insurance to be purchased, including type and coverage limits.

(5) a financial plan for the project detailing the following:

(A) breakdown of project costs;

(B) funding sources for the project and percentage contribution; and

(C) certification for state funding where the state is the sole partner in financing a project or in cases where the local governmental entity is requesting state participation in excess of a 50% share.

(6) a summary of the extent to which the local governmental entity has used its existing resources to promote local economic development, including:

(A) brief description of past general local economic development efforts which may include:

(i) adoption of an economic development sales tax;

(ii) establishment and financing of a local industrial development corporation; and

(iii) use of the Texas Capital Fund, Texas Leverage Fund and local economic development bond initiatives.

(B) a summary of current efforts to support redevelopment necessary to promote private investment and create or retain jobs in the area, including:

(i) financing of capital improvement projects and equipment;

(ii) support of site operations and maintenance;

(iii) availability of tax incentives and/or establishment of a defense readjustment zone or enterprise zone; and

(iv) local funding constraints.

(7) the amount money previously received under this program and number of applications submitted;

(8) the anticipated number of permanent jobs and the economic benefit to the community if the application is successful and the project is funded. If the application includes renovation or construc-

tion, interim jobs should be included and referred to as interim jobs; and

(9) name and contact information for person responsible for the grant application.

§4.36. Processing and Review of Applications.

(a) The local governing body will submit applications for the program to the Executive Director of the Texas Military Preparedness Commission.

(b) The Texas Military Preparedness Commission will:

(1) publicize the program to potential applicants and provide grant solicitation information; and

(2) evaluate each application for completeness. The Texas Military Preparedness Commission will work closely with the applicant to ensure all relevant information is included in the application.

(c) The Executive Director will:

(1) appoint a review panel consisting of three to five members to evaluate applications; and

(2) appoint a review panel chairman.

(d) The review panel will:

(1) review applications, score, and make recommendations to the governing board;

(2) develop procedures to ensure that one adversely affected defense community is not favored over another in recommending funding;

(3) provide evaluations and recommendations for grant awards for all grant applications received based on the following criteria:

(A) the significance of the adverse or positive effect within the local governmental entity, including the number of jobs lost or gained in relation to the workforce in the local governmental entity's jurisdiction and the effect on the area's current and/or projected economy and tax revenue;

(B) the extent to which the local governmental entity has used its existing resources to promote local economic development;

(C) the amount of any grant that the local governmental entity has previously received under this chapter;

(D) the anticipated number of jobs to be created in relation to the amount of the grant sought; and

(E) the extent to which the grant will affect the region in which the local governmental entity is located.

(e) The governing board of the Commission will approve or disapprove the award of the grant. Award of the grant may be contingent on the receipt of federal grants or other partnership monies necessary to complete the project.

§4.37. Availability of Funds.

(a) Funds commitment. Once approved by the governing board for award, program money becomes committed to the awardee subject to the availability of funds.

(1) When the Commission determines that a qualified Defense Economic Adjustment Assistance Grant Program awardee proposal has been rejected by the federal agency or other financial partners, the commitment of funding previously committed will be withdrawn and the funding amount re-allocated to other applicants. The awardee will be given 30 days to renegotiate financial arrangements prior to withdrawal of the state program commitment.

(2) When the Commission has determined that an awardee has secured final approval from federal agencies and other financial partners, program funds will be committed to the awardee, subject to availability of funds.

(3) If the only partner in the project is the local governmental entity, funds will be committed to the entity upon final approval and encumbrance of funds by the awardee.

(b) Non-availability of funds. The Commission expects that availability of program funds will decrease significantly as a state funding biennium progresses. When all monies appropriated by the Texas Legislature to the Commission for a funding biennium have been committed to qualified awardees, remaining applicants shall be notified that funds are no longer available.

(c) The Commission may offer less funding than is requested by the applicant.

§4.38. Awardee Responsibilities.

In order to receive disbursement of grant program funds that have been committed to them, awardees will be required by contract with the Commission to:

(1) have a system established in writing to ensure that appropriate officials provide necessary internal reviews and approvals for the expenditure of funds and for monitoring project performance and adherence to federal award and/or state terms and conditions;

(2) have financial management systems that meet the requirements of the Commission;

(3) retain financial management records, supporting documents, statistical records, and other materials pertinent to the award for a period of three or more years following submission of the final project report and make these records available to the Commission upon request;

(4) be responsible for performing the duties and tasks described under all project grant agreements with federal and other financial partners;

(5) provide the Commission with copies of all project documentation required by federal or other financial partners;

(6) provide project demonstrations, site inspections, photo or other additional documentation, including written materials to substantiate benefit to the Texas economy, as requested by the Commission;

(7) honor intellectual property rights of project participants as outlined in any agreements made to facilitate fulfillment of award activities;

(8) agree that the award may be suspended or terminated if the awardee fails to comply with Commission terms and conditions of the award or if the financial partnership is suspended or terminated;

(9) agree that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Defense Economic Adjustment Assistance Grant Program based on grounds of race, color, national origin, religious affiliation, handicap, or sex;

(10) agree that the Commission shall not be held liable in the event of damages to persons or property which may occur in the course of activities conducted as a result of the award or its cancellation or withdrawal; or

(11) agree to such other terms and conditions as the Commission may require.

§4.39. Commission Responsibilities.
In carrying out its duties and responsibilities under the Act, the Commission shall:

(1) solicit grant applications and publicize application deadlines;

(2) establish and conduct the evaluation and award process in a responsive manner to maximize the opportunity to acquire federal and other funding;

(3) develop contracts with awardees that include sufficient performance measures, audit requirements, and reporting requirements to ensure prudence and due diligence in the expenditure of state funds; and

(4) minimize reporting requirements that may be repetitive of reporting required by federal grant agencies or unnecessary for the effective monitoring of the program.

§4.40. Reporting Responsibilities.

(a) Disbursement of funds will be conditioned on the receipt of documentary evidence of completion of project phases as set forth in the grant contract. The evidence required will be tailored to the project and included in the contract. As a general rule, funds are disbursed as follows:

(1) fifty percent of the total contract amount upon presentation of required documentation of

(A) receipt of federal or other funds;

(B) permit approval;

(C) approval of plans and specifications; and

(D) other relevant evidence of satisfactory planning and commencement of the project set forth in the contract.

(2) forty percent of the total contract amount upon presentation of required documentation of fifty percent completion of the project; and

(3) ten percent of the total contract amount upon presentation of required documentation of completion of the project.

(b) After completion of the project, the awardee will provide the following milestones and updates, including photographs where appropriate:

(1) base line and semi-annual data on the impact of the project on the local economy over a two year period beginning with the completion of the project;

(2) base-line and semi-annual data on any jobs generated by the project and data on the employment of dislocated defense and economically disadvantaged workers for a period of two years beginning with the completion of the project;

(3) satisfactory documentation of required job creation as required by the contract, which may include but is not limited to payroll records; and

(4) other relevant documentation of job creation and economic impact set forth in the contract.

(c) Throughout the project period, the awardee must provide copies of all reports required by federal agencies pursuant to the terms of individual federal grants received, within 30 days of their submission to the granting agencies.

(d) Failure to submit reports in a timely and satisfactory manner may result in the withholding of funds due or requested by the awardee. Failure to document post-completion requirements may result in the return of funds to the Commission as set forth in the contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

TRD-200702556
Al Casals
Executive Director, Texas Military Preparedness Commission
Office of the Governor
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 475-1475

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PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

SUBCHAPTER A. SCOPE AND CONSTRUCTION OF RULES AND GENERAL PROVISIONS

1 TAC §61.3

The Office of the Attorney General (OAG) proposes an amendment to Subchapter A (Scope and Construction of Rules and General Provisions), §61.3, concerning Closing Claims. The proposed amendment will better serve victims of crime by improving the administration of the Texas Crime Victims' Compensation Program.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.33 of the Texas Code of Criminal Procedure provides that the OAG shall adopt rules governing the administration of the Victims of Crime Fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services by the Crime Victims' Compensation Program (CVC).

The proposed amendment accurately implements, interprets, and prescribes the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

The proposed amendment to §61.3 authorizes the OAG to close claims in which a victim or claimant fails to report collateral sources or if a victim dies and there is no claimant on the application.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated costs to the state and

to local governments expected as a result of enforcing or administering the proposed amendment. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed amendment. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated loss or increase in revenues to the state or to local governments as a result of enforcing or administering the proposed amendment. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, that enforcing or administering the amended rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, the anticipated public benefit is clarification and modification of existing policies, with the additional public benefit of having a more effective and efficient administration of a state grant fund program for victim-related services and assistance to certain crime victims. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, the probable economic cost to persons and small businesses required to comply with the proposed amendment is minimal because the proposed amendment does not significantly change the requirements for submitting applications to the OAG for Crime Victims' Compensation.

Mr. Millholland determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of the amendment will be a savings estimated at $1.2 million per year.

Comments may be submitted no later than 30 days from the date of publication to Rita Baranowski, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code 005, Austin, Texas 78711-2548, or by telephone (512) 936-1240, or by e-mail to *Rita.Baranowski@oag.state.tx.us*.

The amendment is proposed under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendment affects Texas Code of Criminal Procedure, Chapter 56.

§61.3. Closing Claims.

(a) A claim for an award may be closed at the discretion of the OAG if any of the following conditions occurs:

(1) The victim has been awarded the statutory maximum amount of compensation allowed under Tex. Code Crim. Proc. Art. 56.42, in accordance with the law in effect at the date of the criminally injurious conduct; [:]

(2) - (7) (No change.)

(8) The victim or claimant fails to respond within a 30-day period to a request made by the OAG for information; [~~or~~]

(9) The OAG is unable, within 30 days of receiving an application, to obtain information substantiating that a crime occurred; [.]

(10) The victim or claimant fails to report a collateral source or any other source of income; or

(11) If a victim is approved for compensation benefits and subsequently dies without a claimant on the application, the claim will be closed. Payment may only be made on crime related bills submitted to the OAG prior to the victim's death which meet all payment requirements. Upon the victim's death, the individual who is legally charged with administering the victim's estate may request to become a claimant and the claim may remain open or be reopened for payment of crime related expenses.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stacey Napier
Deputy Attorney General
Office of the Attorney General
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For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER B. DEFINITIONS

1 TAC §61.101

The Office of the Attorney General (OAG) proposes an amendment to Subchapter B (Definitions), §61.101, concerning Definitions. The proposed amendment will better serve victims of crime by improving the administration of the Texas Crime Victims' Compensation Program.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.33 of the Texas Code of Criminal Procedure provides that the OAG shall adopt rules governing the administration of the Victims of Crime Fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services by the Crime Victims' Compensation Program (CVC).

The proposed amendment accurately implements, interprets, and prescribes the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

The proposed amendment to §61.101 clarifies that CVC can pay one time only for medically prescribed assistive or adaptive items.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the proposed amendment. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed amendment.

Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated loss or increase in revenues to the state or to local governments as a result of enforcing or administering the proposed amendment. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, that enforcing or administering the amended rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, the anticipated public benefit is clarification and modification of existing policies, with the additional public benefit of having a more effective and efficient administration of a state grant fund program for victim-related services and assistance to certain crime victims. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, the probable economic cost to persons and small businesses required to comply with the proposed amendment is minimal because the proposed amendment does not significantly change the requirements for submitting applications to the OAG for Crime Victims' Compensation.

Mr. Millholland determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of the amendment will be a savings estimated at $1.2 million per year.

Comments may be submitted no later than 30 days from the date of publication to Rita Baranowski, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code 005, Austin, Texas 78711-2548, or by telephone (512) 936-1240, or by e-mail to *Rita.Baranowski@oag.state.tx.us*.

The amendment is proposed under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendment affects Texas Code of Criminal Procedure, Chapter 56.

§61.101. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings:

(1) - (4) (No change.)

(5) Medical--As used in Tex. Code Crim. Proc. Art. 56.32(a)(9)(A), the term includes the costs of medical treatment, costs of counseling, the one time only repair or replacement of medical or dental devices in use by the victim prior to the crime if damaged or stolen as a result of the criminally injurious conduct, one time only medically prescribed assistive or adaptive items, or any other medical cost deemed appropriate by the OAG.

(6) - (10) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. PECUNIARY LOSS

1 TAC §§61.402, 61.405 - 61.407, 61.414, 61.415

The Office of the Attorney General (OAG) proposes amendments to Subchapter E, §§61.402, 61.405 - 61.407, and new §61.414 and §61.415, concerning Pecuniary Loss. The proposed amendments and new sections will better serve victims of crime by improving the administration of the Texas Crime Victims' Compensation Program.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.33 of the Texas Code of Criminal Procedure provides that the OAG shall adopt rules governing the administration of the Victims of Crime Fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services by the Crime Victims' Compensation Program (CVC).

The proposed amendments and new sections accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

The proposed amendment to §61.402 adds the requirement that after six months of receiving crime related mental healthcare, a treatment recommendation associated with continued prescribed medication must be submitted; and adds limit to providing care for incapacitated adults or minor children not to exceed 180 consecutive days, if the attending physician provides a letter stating the care is medically necessary.

The proposed amendment to §61.405 clarifies that a victim, and the victim's minor children and dependents are eligible for care benefits, and clarifies that the transportation of a deceased victim is excluded from the limit on burial costs when the remains are transported more than 50 miles from either the place of death to the funeral home, or from the funeral home to the place of burial.

The proposed amendment to §61.406 establishes that earned wages may be considered a collateral source during the period of time within which a victim or claimant receives lost wage compensation benefits from CVC.

The proposed amendment to §61.407 clarifies that "extraordinary pecuniary loss" means crime related expenses that exceed, or the OAG anticipates expenses to exceed, the maximum amount allowed under Tex. Code Crim. Proc. Art. 56.42(a); provides that once the OAG determines that a victim is catastrophically injured, the OAG may approve payment of expenses from either the victim's basic or catastrophic compensation benefits as determined appropriate by the OAG; and requires that the legal owner of a home to submit verification of

ownership and written permission to modify a dwelling for which a victim or claimant seeks accessibility.

New §61.414 establishes the process for applying for compensation benefits when a Texas resident is injured in another state or country with a compensation program, and how to apply for federal and state compensation when a Texas resident is injured as a result of international terrorism.

New §61.415 establishes the method by which CVC requests a refund of overpayments resulting from the victim or claimant failing to report collateral sources, and when a victim dies subsequent to being approved for benefits, and there is no claimant on the application.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for each year of the first five years that the proposed amendments and new sections will be in effect, there will be no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the proposed amendments and new sections. Mr. Millholland has determined that for each year of the first five years that the proposed amendments and new sections will be in effect, there will be no additional estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed amendments and new sections. Mr. Millholland has determined that for each year of the first five years that the proposed amendments and new sections will be in effect, there will be no additional estimated loss or increase in revenues to the state or to local governments as a result of enforcing or administering the proposed amendments and new sections. Mr. Millholland has determined that for each year of the first five years that the proposed amendments and new sections will be in effect, that enforcing or administering the amended rules do not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Millholland has determined that for each year of the first five years that the proposed amendments and new sections will be in effect, the anticipated public benefit is clarification and modification of existing policies, with the additional public benefit of having a more effective and efficient administration of a state grant fund program for victim-related services and assistance to certain crime victims. Mr. Millholland has determined that for each year of the first five years that the proposed amendments and new sections will be in effect, the probable economic cost to persons and small businesses required to comply with the proposed amendments and new sections is minimal because the proposed amendments and new sections do not significantly change the requirements for submitting applications to the OAG for Crime Victims' Compensation.

Mr. Millholland determined that for each of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of the amendments and new sections will be a savings estimated at $1.2 million per year.

Comments may be submitted no later than 30 days from the date of publication to Rita Baranowski, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code 005, Austin, Texas 78711-2548, or by telephone (512) 936-1240, or by e-mail to *Rita.Baranowski@oag.state.tx.us*.

The amendments and new sections are proposed under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments and new sections affect Texas Code of Criminal Procedure, Chapter 56.

§61.402. Loss of Earnings.

(a) - (b) (No change.)

(c) If a victim lost past earnings as a result of mental trauma directly caused by the criminally injurious conduct, the mental health professional that regularly treats the victim may submit a written statement to the OAG verifying loss of past earnings for the victim for a maximum period of six months. In order to continue receiving benefits after six months, a victim may be required to submit [~~must submit~~] to an independent medical evaluation and a disability determination by an M.D. or a D.O. with a psychiatric specialty. Treatment recommendations from the eligible provider of the medical examination may be requested by the OAG. The evaluation will be scheduled and paid for by the OAG.

(d) (No change.)

(e) Loss of earnings may be paid to a claimant if the claimant can substantiate in a manner that is acceptable to the OAG that his or her presence is necessary for the following activities relevant to the criminally injurious conduct:

(1) - (2) (No change.)

(3) providing care for an incapacitated adult victim [~~adults~~] or minor child victim not to exceed 180 consecutive days, [~~children~~] if the attending physician provides a letter stating the care is medically necessary.

(f) - (m) (No change.)

§61.405. Other Limits on Compensation.

(a) (No change.)

(b) Under Tex. Code Crim. Proc. Art. 56.32(a)(9)(c), the cost of care for a victim, a dependent of a victim or a minor child of a victim may be awarded if the criminally injurious conduct occurred on or after September 1, 1997, and the care is a new expense resulting from the crime. This benefit is subject to the following provisions:

(1) The victim or claimant must submit a written request for the care and an explanation of how the crime created the new care expense. Care must be provided by a certified, registered, or licensed care provider.

(2) The OAG will provide reimbursement for the care at a maximum rate of $100 per week for the victim, [~~per~~] dependent, and [~~or~~] minor child or the actual cost of [~~child~~] care, whichever is less. A minor child for purposes of this benefit may be limited to children 14 years of age or younger. The age requirement may be removed by the OAG upon review of extenuating circumstances.

(3) The OAG may limit [~~child~~] care [~~benefits~~] for the [~~dependent(s) of a~~] surviving victim, and the children and dependent(s) of the victim to a maximum of 90 consecutive days. Under extenuating circumstances, [~~child~~] care [~~benefits~~] may be extended upon review by the OAG.

(4) Care for the children and dependent(s) [~~Child care benefits for the dependent(s)~~] of a deceased victim may be paid on an ongoing basis up to a maximum of $100 per week based on the pecuniary loss. This benefit is subject to the award cap determined by the date of the criminally injurious conduct, up to the maximum amount of the claim or until the claimant or dependent(s) no longer qualifies for this benefit by age, marital status, or emancipation.

(c) Funeral and burial expenses provided by Tex. Code Crim. Proc. Art. 56.32(a)(9)(D) are limited to $4,500. The reasonable cost of

transporting [~~Transportation of~~] the deceased victim 50 miles or more to the funeral service location, and 50 miles or more to the place of burial, is an allowable funeral and burial expense which may be [~~is~~] excluded from the $4,500 limit.

(d) - (e) (No change.)

§61.406. Collateral Sources.

(a) If the victim or claimant fails to use, or apply for, a collateral source that is readily available to the victim or claimant for all or a portion of a pecuniary loss, the OAG may deny or reduce an award to the extent of the unused collateral source. Purely donative contributions to the victim or claimant are not considered a collateral source.

(b) A collateral source is a benefit or advantage as defined in the Tex. Code Crim. Proc. Art. 56.32(a)(3) for pecuniary loss related to the crime, and includes the following:

(1) A settlement or other recovery from the offender or any third party.

(2) Wages and other income received during a time period within which a victim or claimant receives or seeks lost earnings benefits.

§61.407. Additional Compensation for Catastrophic Injury.

(a) Pursuant to Tex. Code Crim. Proc. Art. 56.42(b), the OAG may award an additional benefit amount to be used for extraordinary pecuniary losses if personal injury to a victim is catastrophic and results in a total and permanent disability to the victim. For purposes of this benefit, extraordinary pecuniary loss means crime related expenses that exceed, or the OAG anticipates expenses to exceed, the maximum amount allowed under Tex. Code Crim. Proc. Art. 56.42(a).

(b) Once the OAG determines that a victim is catastrophically injured, the OAG may approve payment of expenses from either the victim's basic or catastrophic compensation benefits as determined appropriate by the OAG. The additional catastrophic injury benefit amount is available for the reasonable and necessary costs incurred as a result of catastrophic injury occurring on or after September 1, 1995, as follows:

(1) - (3) (No change.)

(c) The additional catastrophic injury benefit shall be used only to replace lost wages and the following reasonable and necessary expenses incurred on the dates as follows:

(1) "Making a home accessible" means reasonable and necessary [~~structural alterations or~~] modifications to a residence that are necessary to maintain an independent lifestyle. This includes modifying a kitchen, bedroom, or bathroom to accommodate the victim's disability resulting from the criminal injury. The legal owner of the residence must submit to the OAG verification of ownership and written permission to modify the dwelling. (Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 1995).

(2) "Making an automobile accessible" means equipping a personal vehicle [~~an automobile~~] with reasonable and necessary equipment to allow the victim to control or to enter the vehicle [~~automobile with the disability that resulted from the criminal injury~~]. Modification of a vehicle is limited to one time per two year period. Eligibility for this benefit may be based on the OAG's assessment of the extent of the disability and the availability of collateral sources. (Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 1995).

(3) - (6) (No change.)

(7) Rehabilitation technology are those therapeutic measures, deemed appropriate by the OAG, that help the victim attain maximum function and an optimal level of independence in the activities of daily living. (Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 2001).

(8) Long-term medical expenses incurred as a result of medically indicated treatment for the catastrophic injury includes, but is not limited to [~~include long term medical care~~], medications, supplies, surgery, and surgery related expenses necessary to sustain the highest possible quality of life following a catastrophic injury. (Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 2001).

(d) Pursuant to Tex. Code Crim. Proc. Art. 56.42(b) only the victim may be eligible to be awarded compensation for catastrophic injury.

§61.414. Personal Injury Outside of Texas.

(a) Tex. Code Crim. Proc. Art. 56.32(a)(3)(D) defines a collateral source as a benefit available from another state's or another country's crime victims' compensation program. If a Texas resident suffers personal injury or death as a result of criminally injurious conduct that occurs in another state or country that has a crime victims' compensation program, the victim or claimant must first apply for compensation benefits from that state or country. The other state or country must make a compensation eligibility determination prior to the OAG reviewing an application for compensation. If a compensation claim is approved by the other state or country, the victim or claimant must exhaust that collateral source before the OAG makes a compensation award determination.

(b) Tex. Code Crim. Proc. Art. 56.32(a)(3)(B) defines a collateral source as a benefit available from a federal agency. If a Texas resident applies for compensation for personal injury or death as a result of international terrorism, the victim or claimant must first apply with the federal International Terrorism Victim Expenses Reimbursement Program (ITVERP). ITVERP must make a compensation eligibility determination prior to the OAG reviewing an application for compensation. If a compensation claim is approved by ITVERP, the victim or claimant must exhaust that collateral source before the OAG makes a compensation award determination.

§61.415. Refunds.

(a) When compensation benefits are paid as a result of fraud or error, the OAG may request a full or partial refund of paid benefits as follows:

(1) if a victim or claimant knowingly submits false information or documentation, the OAG shall request a refund of payments made in reliance on the false information or documentation;

(2) if the OAG erroneously overpays a victim or claimant, future awards may be offset by the amount paid in error, or the OAG may request a refund;

(3) if new evidence shows that a victim or claimant is ineligible to receive compensation payments, future awards may be offset by the amount paid in error, or the OAG may request a refund;

(4) if the victim or claimant has received the maximum amount of compensation benefits such that there are not future benefits from which to offset an erroneous payment, the OAG shall request a refund of the amount paid in error;

(5) if a provider of service is overpaid for any reason, the OAG shall request an immediate refund.

(6) If a claim is approved for compensation benefits and the victim or claimant subsequently fails to comply with the requirements of Tex. Code Crim. Proc. Chapter 56, Subchapter B, the OAG may deny further benefits and request a refund of compensation benefits awarded.

(b) The OAG may consider the victim's or claimant's financial circumstances and allow the requested refund to be paid in installments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

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Stacey Napier
Deputy Attorney General
Office of the Attorney General
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For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER F. MEDICAL CARE

1 TAC §61.503

The Office of the Attorney General (OAG) proposes an amendment to Subchapter F (Medical Care), §61.503, concerning Mental Health Counseling Expenses. The proposed amendment will better serve victims of crime by improving the administration of the Texas Crime Victims' Compensation Program.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.33 of the Texas Code of Criminal Procedure provides that the OAG shall adopt rules governing the administration of the Victims of Crime Fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services by the Crime Victims' Compensation Program (CVC).

The proposed amendment accurately implements, interprets, and prescribes the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

The proposed amendment to §61.503 requires that bills for mental health treatment must be submitted within 3 years, and clarifies that catastrophic injury benefits are only available to victims.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the proposed amendment. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed amendment. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no additional estimated loss or increase in revenues to the state or to local governments as a result of enforcing or administering the proposed amendment. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, that enforcing or administering the amended rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, the anticipated public benefit is clarification and modification of existing policies, with the additional public benefit of having a more effective and efficient administration of a state grant fund program for victim-related services and assistance to certain crime victims. Mr. Millholland has determined that for each year of the first five years that the proposed amendment will be in effect, the probable economic cost to persons and small businesses required to comply with the proposed amendment is minimal because the proposed amendment does not significantly change the requirements for submitting applications to the OAG for Crime Victims' Compensation.

Mr. Millholland determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of the amendment will be a savings estimated at $1.2 million per year.

Comments may be submitted no later than 30 days from the date of publication to Rita Baranowski, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code 005, Austin, Texas 78711-2548, or by telephone (512) 936-1240, or by e-mail to *Rita.Baranowski@oag.state.tx.us*.

The amendment is proposed under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendment affects Texas Code of Criminal Procedure, Chapter 56.

§61.503. Mental Health Counseling Expenses.

(a) - (e) (No change.)

(f) Reimbursement for related mental health treatment for victims or claimants must be submitted to the OAG within three years of the date of service.

(g) Pursuant to Tex. Code Crim. Proc. Art. 56.42(b) only the victim may be awarded compensation for catastrophic injury.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stacey Napier
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SUBCHAPTER G. RELOCATION AND HOUSING RENTAL EXPENSES BENEFITS

1 TAC §61.601, §61.602

The Office of the Attorney General (OAG) proposes amendments to Subchapter G, §61.601 and §61.602, concerning Relocation and Housing Rental Expenses Benefits. The proposed amendments will better serve victims of crime by improving the administration of the Texas Crime Victims' Compensation Program.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.33 of the Texas Code of Criminal Procedure provides that the OAG shall adopt rules governing the administration of the Victims of Crime Fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services by the Crime Victims' Compensation Program (CVC).

The proposed amendments accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

The proposed amendment to §61.601 adds new definition of "Family violence center," "Family violence nonresidential center," and "Family violence shelter center."

The proposed amendment to §61.602 requires a victim or claimant seeking relocation expenses to complete a form signed by a representative from law enforcement, the county or district attorney, or a family violence center, changes housing rental payments from a single payment totaling $1800 to three months of the actual housing rental amount, not to exceed $1800, denies relocation and housing rental benefits if the offender moves into the dwelling with the victim or claimant, requires a permanent address and alternate phone number from the victim or claimant and requires that a request for rent and relocation expenses must be submitted to the OAG within three years of the date of crime. Establishes that rent payments shall be limited to the victim's proportionate share of rent based on the number of adult tenants listed on the leasing agreement.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the proposed amendments. Mr. Millholland has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no additional estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed amendments. Mr. Millholland has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no additional estimated loss or increase in revenues to the state or to local governments as a result of enforcing or administering the proposed amendments. Mr. Millholland has determined that for each year of the first five years that the proposed amendments will be in effect, that enforcing or administering the amended rules do not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Millholland has determined that for each year of the first five years that the proposed amendments will be in effect, the anticipated public benefit is clarification and modification of existing policies, with the additional public benefit of having a more effective and efficient administration of a state grant fund program for victim-related services and assistance to certain crime victims. Mr. Millholland has determined that for each year of the first five years that the proposed amendments will be in effect, the probable economic cost to persons and small businesses required to comply with the proposed amendments is minimal because the proposed amendments do not significantly change the requirements for submitting applications to the OAG for Crime Victims' Compensation.

Mr. Millholland determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of the amendments will be a savings estimated at $1.2 million per year.

Comments may be submitted no later than 30 days from the date of publication to Rita Baranowski, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code 005, Austin, Texas 78711-2548, or by telephone (512) 936-1240, or by e-mail to *Rita.Baranowski@oag.state.tx.us*.

The amendments are proposed under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments affect Texas Code of Criminal Procedure, Chapter 56.

§61.601. Definitions Pertaining to Relocation and Housing Rental Expenses Benefits

For the limited purpose of awarding benefits for relocation and housing rental expenses pursuant to Tex. Code Crim. Proc. Art. 56.42(d)(1) and (2), the following terms shall have the following meanings:

(1) Deposits--Expenses for rental deposits are limited to property deposits. [~~Family violence--As defined in Tex. Fam. Code §71.004(1), the term "family violence" refers to an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.~~]

(2) - (3) (No change.)

(4) Family violence--As defined in Tex. Fam. Code §71.004(1), the term "family violence" refers to an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself. [~~Household--As defined in Tex. Fam. Code §71.005, the term "household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.~~]

(5) Family violence center--As defined in Tex. Human Resources Code §51.002, includes a family violence shelter center and a family violence nonresidential center. [~~Member of a household--As defined by the Tex. Fam. Code, §71.006, the term "member of a household" includes a person who previously lived in the household.~~]

(6) Family violence nonresidential center--As defined in Tex. Human Resources Code §51.002, means a program that is operated by a public or private nonprofit organization, and provides comprehensive nonresidential services to victims of family violence. [~~Place of Residence--The term means a victim's dwelling, the property under the dwelling, and all other areas and structures on the property under the control of the owner of the property.~~]

(7) Family violence shelter center--As defined in Tex. Human Resources Code §51.002, means a program that is operated by a public or private nonprofit organization, and provides comprehensive residential and nonresidential services to victims of family violence. [~~Deposits--Expenses for rental deposits are limited to property deposits.~~]

(8) Household--As defined in Tex. Fam. Code §71.005, the term "household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other. [~~Utility connections--Expenses for utility connections are limited to expenses for gas, electricity, water, and one telephone line connection.~~]

(9) Member of a household--As defined by the Tex. Fam. Code, §71.006, the term "member of a household" includes a person who previously lived in the household.

(10) Place of Residence--The term means a victim's dwelling, the property under the dwelling, and all other areas and structures on the property under the control of the owner of the property.

(11) Utility connections--Expenses for utility connections are limited to expenses for gas, electricity, water, and one telephone line connection.

§61.602. Eligibility and Reimbursement for Relocation and Housing Rental Expenses Benefits.

(a) Pursuant to Tex. Code Crim. Proc. Art. 56.42(d), the OAG shall determine eligibility for reimbursement of the reasonable and necessary costs for relocation and housing rental expenses. A request for relocation and housing rental expenses must be submitted within three years of the date of crime.

(b) - (d) (No change.)

(e) Before the OAG will make an award pursuant to Tex. Code Crim. Proc. Art. 56.42(d), the OAG will verify that the victim requesting this benefit was the victim of domestic violence or family violence by reviewing:

(1) the victim's or claimant's affidavit seeking a protective order and the court order signed by the issuing judge, pursuant to Tex. Fam. Code Chapters 71, 81, and 82; or the offense report submitted by a law enforcement agency; [~~and~~]

(2) proof of the relationship between the victim and the offender in a manner deemed appropriate by the OAG; and[~~.~~]

(3) a completed OAG Rent and Relocation Verification Form signed by a representative from a law enforcement agency, the office of a county or district attorney, a representative from a family violence center, a family violence nonresidential center, a family violence shelter center, or any agency deemed appropriate by the OAG.

(f) Before the OAG will make an award pursuant to Tex. Code Crim. Proc. Art. 56.42(d), the OAG will verify that the victim was sexually assaulted [~~requesting this benefit was the victim of a sexual assault~~] in the victim's residence by reviewing the offense report submitted by a law enforcement agency and a completed OAG Rent and Relocation Verification Form signed by a representative from a law enforcement agency, the office of a county or district attorney, a representative from a family violence center, a family violence nonresidential center, a family violence shelter center, or any agency deemed appropriate by the OAG.

(g) To determine the amount of an award for relocation expenses, the victim or claimant must provide the OAG proof of actual costs or an estimate of the relocation expenses on the form provided and approved by the OAG. Relocation expenses may include, but are not limited to the costs of rental deposits, utility connections, moving vans, moving labor, packing, private vehicle mileage, transportation, lodging, and meals. Relocation expenses shall be limited to the victim's proportionate share of costs based on the number of adult tenants listed on the leasing agreement. Expenses for transportation, lodging, and meals will be reimbursed in a manner consistent with §61.404 of this title. Restrictions on reimbursement for travel under 20 miles are not applicable for this award.

(h) (No change.)

(i) An award for rental expenses under this provision may be approved for three months of rent, not to exceed $1,800.00. Rent payments shall be limited to the victim's proportionate share of rent based on the number of adult tenants listed on the leasing agreement. Pursuant to Tex. Code Crim. Proc. Art 56.41(b)(5), rent and relocation expenses shall be denied if the offender occupies the new residence with the victim or claimant. To make an award for rental expenses, the victim must provide to the OAG the following information:

(1) a copy of the signed lease or signed contract for a rental agreement for the victim, or a written statement from the landlord showing the location of the rental property, the date of the victim's move-in, the rent amount, the rent due date, and the names of the occupants of the rental property; [~~and~~]

(2) the landlord's name, phone number, address, and federal tax identification number or social security number; or the name of the management company to whom the rent is paid and its phone number, address, and federal tax identification number; and[~~.~~]

(3) other information deemed necessary by the OAG to assist in locating the victim or claimant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702631
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 5, 2007
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER J. ADMINISTRATIVE REMEDIES

1 TAC §61.901, §61.905

The Office of the Attorney General (OAG) proposes an amendment Subchapter J, §61.901 and new §61.905, concerning Administrative Remedies. The proposed amendment and new sec-

tion will better serve victims of crime by improving the administration of the Texas Crime Victims' Compensation Program.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.33 of the Texas Code of Criminal Procedure provides that the OAG shall adopt rules governing the administration of the Victims of Crime Fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services by the Crime Victims' Compensation Program (CVC).

The proposed amendment and new section accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

The proposed amendment to §61.901 clarifies that the final decision of the OAG may only be rendered by the hearing officer after a final ruling hearing, a prehearing conference, or based on the available record.

New §61.905 requires an itemized statement and verification of legal services rendered to be submitted for payment of attorney fees.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for each year of the first five years that the proposed amendment and new section will be in effect, there will be no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the proposed amendment and new section. Mr. Millholland has determined that for each year of the first five years that the proposed amendment and new section will be in effect, there will be no additional estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed amendment and new section. Mr. Millholland has determined that for each year of the first five years that the proposed amendment and new section will be in effect, there will be no additional estimated loss or increase in revenues to the state or to local governments as a result of enforcing or administering the proposed amendment and new section. Mr. Millholland has determined that for each year of the first five years that the proposed amendment and new section will be in effect, that enforcing or administering the amended rule and new section does not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Millholland has determined that for each year of the first five years that the proposed amendment and new section will be in effect, the anticipated public benefit is clarification and modification of existing policies, with the additional public benefit of having a more effective and efficient administration of a state grant fund program for victim-related services and assistance to certain crime victims. Mr. Millholland has determined that for each year of the first five years that the proposed amendment and new section will be in effect, the probable economic cost to persons and small businesses required to comply with the proposed amendment and new section is minimal because the proposed amendment and new section does not significantly change the requirements for submitting applications to the OAG for Crime Victims' Compensation.

Mr. Millholland determined that for each of the first five years the amendment and new section are in effect the public benefit anticipated as a result of the amendment and new section will be a savings estimated at $1.2 million per year.

Comments may be submitted no later than 30 days from the date of publication to Rita Baranowski, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code 005, Austin, Texas 78711-2548, or by telephone (512) 936-1240, or by e-mail to *Rita.Baranowski@oag.state.tx.us*.

The amendment and new section are proposed under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendment and new section affect Texas Code of Criminal Procedure, Chapter 56.

§61.901. Request for Reconsideration of Award Decision.

(a) (No change.)

(b) Within 30 days of the date of the OAG's award decision, the victim or claimant must submit a signed, written request for reconsideration stating the reasons for the request for reconsideration. If the victim or claimant fails to file a written request for reconsideration of the OAG's award decision within the 30-day time period, the decision of the OAG becomes [~~the~~] final and the victim or claimant waives the right to further appeal [~~decision of the agency~~].

(c) The OAG may not grant a reconsideration if a request is not filed by the victim or claimant within the 30-day time period, unless the victim or claimant shows good cause for late filing. The victim or claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for reconsideration of the OAG's award decision within the 30-day time period. If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes [~~the~~] final and the victim or claimant waives the right to further appeal [~~decision of the agency~~].

(d) The OAG will provide the victim or claimant a written notification of its reconsideration decision. If the victim or claimant is dissatisfied with the reconsideration of the OAG's award decision, the victim or claimant must file a signed, written request for a hearing with the OAG within 30 days of the date of the OAG's written notification of the reconsideration decision. If the victim or claimant fails to file a written request for a hearing within the 30-day time period, the reconsideration decision becomes final and the victim or claimant waives the right to a hearing. A final decision from the attorney general may only be rendered by the OAG hearing officer after a prehearing conference, a final ruling hearing, or based on the available record.

(e) (No change.)

§61.905. Attorney Fees.

(a) Pursuant to Tex. Code Crim. Proc. Art. 56.43 the OAG shall determine and award reasonable attorney fees to the attorney representing a victim or claimant in a dispute of an OAG compensation determination.

(b) If there is no hearing or dispute about the amount awarded to the victim or claimant and the attorney only assists the victim or claimant in filling out a CVC application for compensation, the attorney fee shall be the lesser of either $300 or 25% of the amount the attorney assisted the victim or claimant in obtaining.

(c) If the victim or claimant disputes the amount awarded and the attorney represents the victim in a reconsideration review or hear-

ing, the OAG shall determine and award reasonable attorney fees commensurate with legal services rendered. Attorney fees for representation in a disputed claim shall not exceed 25% of the amount the attorney assisted the victim or claimant in obtaining. To request payment of attorney fees a written request for payment and the following documentation must be submitted to CVC by the attorney:

(1) an "Attorney's Statement Regarding Fees" form provided by the OAG; and

(2) an itemized statement of legal services rendered.

(d) If the attorney fee is based on an undetermined benefit amount which the attorney assisted the victim or claimant in obtaining, the attorney may request attorney fee payments in installments or in a lump sum upon final payment to or on behalf of a victim or claimant. The attorney may be required to submit an itemized statement of legal services rendered prior to each attorney fee payment. Attorney fee payments shall not be paid in excess of the amount claimed in the itemized statement of legal services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702633

Stacey Napier

Deputy Attorney General

Office of the Attorney General

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For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.2

The Texas Health and Human Services Commission (HHSC) proposes to amend §353.2, Definitions, to update the definition of value-added services. The term value-added services is used to define additional services that Medicaid managed care organizations provide to their Medicaid members and that enhance the value of the services that are required to be provided under the managed care contracts.

Background and Justification

Senate Bill (S.B.) 10, 80th Legislature, Regular Session, 2007, adds §533.019 to the Government Code to require HHSC to actively encourage Medicaid managed care organizations that contract with HHSC to offer value-added benefits, including health care services or benefits or other types of services that are in addition to those that are required to be offered by the health plans and that have the potential to improve the health status of enrollees in the plans. S.B. 10 specifies that this law change applies to managed care contracts effective September 1, 2007, and states that HHSC shall seek to amend contracts before September 1, 2007, in order to meet this effective date.

The current rule states that value-added services must be health care services. To align the rule with S.B. 10 and planned contract changes for value-added services, the proposed amendment states that value-added services may be health care services or positive incentives that promote healthy lifestyles and improve health outcomes.

This rule applies to Medicaid managed care, but since the managed care contracts for the Children's Health Insurance Program (CHIP) are combined with the Medicaid contracts, these changes also will give CHIP managed care plans flexibility to offer additional value-added services to CHIP members.

Section-by-Section Summary

As amended, §353.2(67) revises the definition of value-added services to broaden the scope of the value-added services that may be offered by Medicaid managed care plans to their enrollees. Value-added services may be actual health care services, benefits, or positive incentives that HHSC determines will promote healthy lifestyles and improve health outcomes. These may include participating in certain health-related programs or engaging in certain health-conscious behaviors.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during each year of the first five years that the amended rule is in effect, there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the amended rule is in effect, the public will benefit by allowing Medicaid managed care organizations to provide a broader range of value-added services to their members. These services will promote healthier lifestyles and improve health outcomes.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposed rule may be submitted to Shirley Stanford, Program Specialist VI in the Medicaid/CHIP Division, by mail to the Texas Health and Human Services Commission, P.O. Box 85200, MC H312, Austin, Texas 78708-5200, by fax to (512) 491-1972, or by e-mail to shirley.stanford@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for July 11, 2007 at 9:00 a.m. in the HHSC Lone Star Conference Room, at 11209 Metric Boulevard, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

Statutory Authority

The amendment is proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code §32.021 and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code §533.002, which directs HHSC to implement the Medicaid managed care program.

The proposed amendment affects the Human Resources Code Chapter 32, and the Texas Government Code Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§353.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise.

(1) - (66) (No change.)

(67) Value-Added Services--Additional services for coverage beyond those specified in the Request For Proposal. Value-Added Services may [~~must~~] be actual health care services, [~~or~~] benefits, or positive incentives that the Commission determines will promote healthy lifestyles and improve health outcomes. [~~rather than gifts, incentives, health assessments or educational classes.~~] These may include participating in certain health-related programs or engaging in certain health-conscious behaviors. Best practice approaches to delivering covered services are not considered Value-Added Services. For foster children in a statewide Medicaid managed care program, value added services may include non-health care services and benefits that support the physical, mental and/or developmental well being of the child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702610
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.114

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.114, concerning Consumer Directed Services Payment Option, in its Reimbursement Rates Chapter.

Background and Justification

The Department of Aging and Disability Services (DADS) implemented the Consumer Directed Services (CDS) model in September 2001, in multiple Medicaid programs in response to Senate Bill 1586, 76th Legislature, Regular Session, 1999. The CDS model allows consumers or their legal guardians to be employers of record for the service providers. Thus, under CDS, consumers have greater control and responsibility for their care and are able to self-direct their services. Consumers who choose consumer direction choose a CDS Agency (CDSA) to provide financial management services such as payroll processing, assistance with developing a budget, and guidance to the consumer acting as an employer.

The CDS model is available in the following programs.

Community Based Alternatives (CBA)

Community Living Assistance and Support Services (CLASS)

Deaf-Blind-Multiple Disability Waiver (DBMD)

Primary Home Care (PHC)

Consumer Managed Personal Assistance Services (CMPAS)

Medically-Dependent Children's Program (MDCP).

Beginning in January 2008, CDS will also be available in the Home and Community Based Services (HCS) and the Texas Home Living (TxHmL) programs.

The current reimbursement methodology for CDS allocates a flat fee out of the total payment rate for each CDS hour of service, regardless of the amount of the total payment rate. During the renewal of the Texas Home Living (TxHmL) waiver, the Centers for Medicare and Medicaid Services (CMS), United States Department of Health and Human Services, directed Texas to revise the current CDSA payment rate structure from a flat rate tied to the CDSA personal care services hours (such as attendant and respite care) to one that reflects the CDSA's actual level of effort in providing support services. CMS recommended that Texas adopt a monthly fee be paid to the CDSAs. The proposed amendment to §355.114 modifies the reimbursement methodology for CDS regarding the payment made to CDSAs, as directed by CMS. The proposed amendment also standardizes language in §355.114.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no an-

ticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, during the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing §355.114 is that the Health and Human Services Commission (HHSC) will be in compliance with the CMS mandate regarding reimbursement methodology for CDS agencies.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

The HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Sarah Hambrick in the Rate Analysis Division, MC H-400, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax (512) 491-1998 or by e-mail at sarah.hambrick@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment to §355.114 affects the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.114. Consumer Directed Services Payment Option.

(a) For all programs providing consumer directed services (CDS) except the Home and Community-based Services (HCS) program, the sum of the payments to [~~payment rate for~~] the contracted CDS agency for a 12-month period and the funds available to [~~payment rate for~~] the consumer participating in CDS for a 12-month period must not exceed the amount paid [~~payment rate made~~] to contracted providers for non-CDS consumers in these programs for the same 12-month period. [~~The payment rate for the contracted CDS agency is determined by modeling the estimated cost to carry out the responsibilities of the CDS agency. The payment rate for the consumer is determined by subtracting the contracted CDS agency payment rate from the payment rate made to contracted providers in these programs.~~]

(1) The monthly payment to the contracted CDS agency is determined by modeling the estimated cost to carry out the responsibilities of the CDS agency.

(2) The funds available to the consumer participating in CDS are determined by subtracting the payments to the CDS agency for a 12-month period from the total amount authorized for the consumer's services for the same 12-month period.

(b) For the HCS program the [~~payment rate for the contracted CDS agency is determined by modeling the estimated cost to carry out the responsibilities of the CDS agency. The payment rate for the consumer is modeled and is based on the direct care rate plus a portion of the operating costs from the case management fee. The~~] sum of the payment to [~~rate for~~] the contracted CDS agency for a 12-month period, the funds available to the consumer participating in CDS for a 12-month period, and the case management fee remaining for the provider agency for the same 12-month period must not [~~cannot~~] exceed, on average, the amount paid to contracted providers for non-CDS consumers in the program for the same 12-month period [~~these programs~~].

(1) The monthly payment to the contracted CDS agency is determined by modeling the estimated cost of carrying out the responsibilities of the CDS agency.

(2) The funds available to the consumer participating in CDS are modeled and are based on the direct care costs plus a portion of the operating costs included in the HCS rate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702611
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-6900

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SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.456

The Health and Human Services Commission (HHSC) proposes an amendment to §355.456, concerning the reimbursement methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program.

Background and Justification

This rule establishes the reimbursement methodology for state-operated and non-state operated facilities in the ICF/MR program. HHSC, under its authority and responsibility to administer and implement rates, is updating the methodology by eliminating the rebasing process and by using audited cost report data. The

amended rule will reflect the method used to determine rates effective September 1, 2007.

The amendment to this rule is made in accordance with the appropriations under the 2008 - 09 General Appropriations Act (Article II, Special Provisions, Section 57(b)(1), H.B. 1, 80th Legislature, Regular Session, 2007). Current rules for the ICF/MR program limit payment rates to the amount of funds appropriated for the program. The proposed amendment will not change this limitation.

Section-by-Section Summary

The amendment revises §355.456(d) to:

(1) Remove the rebasing process to determine rates for the ICF/MR program. The process of using a consultant and advisory panel is no longer used for rate determination in these programs. The current process, which will be used for rate determination effective September 1, 2007, will update the modeled rates based on audited cost report cost data to the extent possible within the appropriations for the 2008 - 2009 biennium.

(2) Remove the timeframe for the rebasing process since the rates are determined in accordance with §355.101(c)(1) (relating to Introduction), "coincident with the state's biennium."

(3) Remove references to annually inflating rates since the rates are determined on the state's biennium.

(4) Remove references to collecting a sample of cost data from providers since all providers are required to submit cost reports.

The amendment also deletes §355.456(e), the transitional add-on rate, which is obsolete.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no additional cost to the state for each state fiscal year the rule is implemented. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of these proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider. In addition, current rules for these programs limit payment rates to the amount of funds appropriated for the program. The proposed elimination of the rebasing process, including elimination of language regarding annual inflation, does not change this limitation.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that obsolete rule language will be eliminated and the rules will reflect the actual method used to determine rates effective September 1, 2007.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Carolyn Pratt in the HHSC Rate Analysis Department by telephone at (512) 491-1359 or by facsimile at (512) 491-1998. Written comments on the proposal may be submitted to Ms. Pratt by facsimile, by e-mail to carolyn.pratt@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for July 16, 2007, at 10:00 a.m. in the HHSC Lone Star Conference Room at the Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code Chapter 32.

The proposed amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.456. <u>Reimbursement</u> [~~Rate Setting~~] Methodology.

(a) Types of facilities. There are two types of facilities for purposes of rate setting: state-operated and non-state operated. Facilities are further divided into classes that are determined by the size of the facility.

(b) Classes of non-state operated facilities. There is a separate set of reimbursement rates for each class of non-state operated facilities, which are as follows.

(1) Large facility--A facility with a Medicaid certified capacity of 14 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Medium facility--A facility with a Medicaid certified capacity of nine through 13 as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(3) Small facility--A facility with a Medicaid certified capacity of eight or fewer as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(c) Classes of state-operated facilities. There is a separate interim rate for each class of state-operated facilities, which are as follows:

(1) Large facility--A facility with a Medicaid certified capacity of 17 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Small facility--A facility with a Medicaid certified capacity of 16 or less as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(d) Reimbursement rate determination for non-state operated facilities. HHSC will adopt the reimbursement rates for non-state operated facilities in accordance with §355.101 of this title (relating to Introduction) and this subchapter.

[~~(1) The initial modeled rates for calendar year 1997 are set according to paragraph (7) of this subsection.~~]

[~~(2) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the direct service portion of the previous year's rates by the Personal Consumption Expenditures (PCE) Chain-Type Index as defined in §355.108 of this title (relating to Determination of Inflation Indices). These rates are uniform by class of facility and client level-of-need, and determined prospectively and annually.~~]

[~~(3) In the year 2000, the models from which the rates are based are analyzed to determine if rebasing is necessary for the rates paid in the year 2001. The models will be analyzed every three years thereafter to determine if rebasing is necessary.~~]

(1) [~~(4)~~] Reimbursement rates combine residential and day program services, i.e., payment for the full 24 hours of daily service.

(2) [~~(5)~~] Reimbursement rates are differentiated based on client level-of-need. The levels of need are intermittent, limited, extensive, pervasive, and pervasive plus.

[~~(6) Modeled rates are rebased according to §355.458 of this title (relating to Rebasing the Non-State Operated Facility Modeled Rates).~~]

(3) [~~(7)~~] The recommended modeled rates are based on cost components deemed appropriate for economically and efficiently operated services. The determination of these components is based on cost reports submitted by ICF/MR providers [~~a combination of data including, but not limited to, historical costs and operational information collected from a representative sample of ICF/MR providers. In the year 2000 and every three years thereafter, an advisory panel consisting of providers, advocates, and HHSC, and an independent consultant retained by HHSC analyzes available information regarding historical cost and operational data and level-of-need assessment to determine if revisions to the models are necessary. HHSC will review the analysis in setting rates~~].

[~~(e) Transitional add-on. A transitional add-on, in an amount to be determined by HHSC, will be paid to a provider for a consumer who is admitted to a small non-state operated facility on or after October 1, 2001, if the consumer is admitted from a large state-operated facility. The transitional add-on will be paid for the time period the consumer resides in the small non-state operated facility or for 180 calendar days, whichever time period is less.~~]

(e) [~~(f)~~] Reimbursement determination for state-operated facilities. Except as provided in paragraph (2) of this subsection and subsection (f) [~~(g)~~] of this section, state-operated facilities are reimbursed an interim rate with a settlement conducted in accordance with paragraph (1)(B) of this subsection. HHSC will adopt the interim reimbursement rates for state-operated facilities in accordance with §355.101 of this title (relating to Introduction) and this subchapter.

(1) State-operated facilities certified prior to January 1, 2001, will be reimbursed using an interim reimbursement rate and settlement process.

(A) Interim reimbursement rates for state-operated facilities are based on the most recent cost report accepted by HHSC.

(B) Settlement is conducted each state fiscal year by class of facility. If there is a difference between allowable costs and the reimbursement paid under the interim rate, including applied income, for a state fiscal year, federal funds to the state will be adjusted based on that difference.

(2) A state-operated facility certified on or after January 1, 2001, will be reimbursed using a pro forma rate determined in accordance with §355.101(c)(2)(B) and §355.105(h) of this title (relating to Introduction and General Reporting and Documentation Requirements). A facility will be reimbursed under the pro forma rate methodology until HHSC receives an acceptable cost report which includes at least 12 months of the facility's cost data and is available to be included in the annual interim rate determination process.

(f) [~~(g)~~] HHSC may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless HHSC and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(g) [~~(h)~~] Cost Reporting. For cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years the following applies:

(1) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(3) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) [~~(i)~~] Adjusting costs. Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(i) [~~(j)~~] Field Audit and Desk Review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-6900

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1 TAC §355.458

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Health and Human Services Commission (HHSC) proposes to repeal §355.458, concerning the rebasing of model rates for non-state operated providers in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program.

Background and Justification

This rule establishes the rebasing process that is part of the reimbursement methodology for non-state operated facilities in the ICF/MR program. The rebasing process revises the underlying assumptions on which the modeled rates are calculated. HHSC, under its authority and responsibility to administer and implement rates, is updating the methodology by eliminating the rebasing process and by using audited cost report data. Section 355.456 in this subchapter, which is amended as part of this rule packet, reflects the method used to determine rates effective September 1, 2007.

Section-by-Section Summary

This rule is repealed in its entirety. The purpose of this repeal is to delete the rate rebasing process to determine rates for the ICF/MR program, because the process of using a consultant and advisory panel is no longer used for rate determination in this program. The current process, which will be used for rate determinations effective September 1, 2007, will update the modeled rates based on audited cost report cost data to the extent possible within the appropriations for the 2008 - 2009 biennium.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the repeal is in effect there will be no additional cost to the state for each state fiscal year the rule is implemented. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the repeal. The implementation of the proposed repeal does not require any changes in practice or any additional cost to the contracted provider. In addition, current rules for this program limit payment rates to the amount of funds appropriated for the program. The proposed elimination of the rebasing process does not change this limitation.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with the repeal. The repeal will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the repeal is in effect, the expected public benefit is that an obsolete method for determining ICF/MR rates will be eliminated and that other rules within this subchapter will reflect the actual method used to determine rates for this program effective September 1, 2007.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Carolyn Pratt in the HHSC Rate Analysis Department by telephone at (512) 491-1359 or by facsimile at (512) 491-1998. Written comments on the proposal may be submitted to Ms. Pratt by facsimile, by e-mail to carolyn.pratt@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for July 16, 2007, at 10:00 a.m. in the HHSC Lone Star Conference Room at the Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of

HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code Chapter 32.

The proposed repeal affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.458. Rebasing the Non-State Operated Facility Modeled Rates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-6900

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.507

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.507, concerning Reimbursement Rates-Reimbursement Methodology for the Medically Dependent Children Program (MDCP).

Background and Justification

The purpose of this amendment is to: (1) base MDCP rates on Community Based Alternatives home-and-community-support-services (CBA HCSS) fee-for-service historical costs, unless the current MDCP rates are higher; current rates contained in the rule will be deleted; (2) establish that rates for independent registered nurse (RN) and licensed vocational nurse (LVN) services will be 80 percent of the CBA HCSS rates for these services; (3) base the MDCP camp rate on the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate; and (4) establish that facility-based respite rates will be based on 77 percent of the nursing facility fee-for-service rates.

Currently, MDCP provider reimbursement rates for some services are lower than for other Medicaid long term care programs (e.g., CBA HCSS, CLASS DSA), although the services delivered are similar. In an effort to achieve consistency in Medicaid payments for similar services in Medicaid long term care programs, HHSC is proposing to make the MDCP rates for LVN, RN, and personal assistance services provided by home and community support services agencies the same as those in CBA and to make the camp rate ceiling in MDCP the same as the out-of-home respite rate ceiling in the CLASS program.

In 2003, cost surveys were collected from MDCP providers in order to determine if increased Medicaid rates for RN, LVN and personal assistance services in MDCP were justified and to determine if the MDCP rates should be higher than or equal to other long term care programs. Analyses of these cost surveys determined that the costs for delivering MDCP services were very similar to the costs for services delivered by CBA HCSS agencies for RN, LVN, and personal assistance services. Subsequently, it was determined that, when funds became available and based on the similarity of their costs, MDCP rates should equal the CBA rates. Based on increased appropriations for the MDCP program for the 2008 - 2009 biennium, this amendment proposes rate increases for MDCP to bring the rates for RN, LVN, and personal assistance services in line with CBA. In addition, the amendment proposes to align the camp rate ceiling with the out-of-home CLASS respite rate ceiling. The CLASS program utilizes the out-of-home respite rate ceiling to pay for camp services. Actual camp rates paid are the lessor of the actual camp cost or the rate ceiling amount.

Currently in the MDCP program, the rates paid to independent RN and LVN providers are less than the rates paid to contracted HCSS agency RN and LVN providers. This difference in rates is because the independent providers do not have the same overhead and operational costs as an HCSS agency. The rule proposal establishes the independent rate for RN and LVN providers at 80 percent of the HCSS agency rate to recognize this cost difference.

The rates for MDCP facility-based respite care were established at 63 percent of the 1996 nursing facility rate and have remained constant since that time. The proposed rule establishes the facility respite rate for MDCP at 77 percent of the nursing facility base rate by level of care, which will result in an increase in the facility respite rates.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect there will be a fiscal impact to state government of $1,682,405 for state fiscal year (SFY) 2008, $1,833,422 for SFY 2009, $1,957,343 for SFY 2010, $1,957,343 for SFY 2011, and $1,957,343 for SFY 2012 as a result of increased rates to MDCP providers. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section. The rule does not impose any additional requirements on contracted providers delivering MDCP services.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, during the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing the section are that there will be increased consistency in payment rates for similar services across Medicaid long term care programs while increasing rates for the MDCP program.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

The HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Victor Perez in the Rate Analysis Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax (512) 491-1998 or by e-mail at Victor.Perez@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to proposed and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.507. Reimbursement Methodology for the Medically Dependent Children Program.

(a) The Texas Health and Human Services Commission (HHSC) determines payment rates for qualified contracted providers for the provision of services in the Medically Dependent Children Program (MDCP). HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) Effective September 1, 2007, rates for home-and-community-support-service agency (HCSS) registered nurse (RN), HCSS agency licensed vocational nurse (LVN), and HCSS agency personal assistance services (PAS) (with delegation of the service by an RN and without delegation of the service by an RN)), will be based upon the Community-Based Alternatives (CBA) HCSS-approved rates for RN and LVN services in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and non-participant PAS in accordance with §355.112(l) of this title (relating to Attendant Compensation Rate Enhancement). However, if the rates in effect for these MDCP services on August 31, 2007, are greater than the approved rates for the CBA HCSS for RN, LVN, and non-participant PAS, the higher MDCP rates will remain in effect on September 1, 2007. Effective September 1, 2007, the reimbursement rate for independent RNs will be equal to 80 percent of the MDCP rate for HCSS agency RNs, and the reimbursement rate for independent LVNs will be equal to 80 percent of the MDCP rate for HCSS agency LVNs.

[~~(1) Payment rates for MDCP services in effect on January 1, 1998, will remain in effect until HHSC obtains sufficient reliable cost data to determine new payment rates. These payment rates per hour of direct service are $24.00 for independent registered nurse (RN), $20.00 for independent licensed vocational nurse (LVN), $27.50 for home-and-community-support-service agency RN or LVN, $10.22 for personal assistance service (PAS) with delegation of the service by an RN, and $9.84 for PAS without delegation of the service by an RN.~~]

(c) The rate ceiling for camp services will be equivalent to the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate. Actual payments for this service will be the lesser of the rate ceiling or the actual cost of the camp.

(d) Facility-based respite care rates are determined on a 24-hour basis. The rates for facility-based respite care are calculated at 77 percent of the daily nursing facility base rates by level of care The base rates used in this calculation do not include nursing facility rate add-ons.

(e) [~~(2)~~] Payment rates may be determined in the future on a pro forma basis in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). [~~Payment rates if determined on a pro forma basis will include payment rates per hour of service for independent registered nurse (RN), independent licensed vocational nurse (LVN), home-and-community-support-service agency RN, home-and-community-support-service agency LVN, and personal assistance services.~~]

(f) [~~(3)~~] The following sections of this title will apply to cost reports or surveys required to obtain the necessary information to determine new payment rates: §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING

PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.722

The Health and Human Services Commission (HHSC) proposes an amendment to §355.722, concerning the reporting of costs and fiscal accountability spending requirements for the Home and Community-based Services (HCS) program.

Background and Justification

On an annual basis, HCS providers must submit cost reports as directed by HHSC or its designee and in accordance with this subchapter. HHSC, under its authority and responsibility to administer and implement rates, is amending this rule to clarify its applicability and to update the cost reporting processes for HCS providers. The amended rule will reflect the method used to collect cost data for determining rates effective September 1, 2007.

The amendment to this rule is made in accordance with the appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57(b)(1), H.B. 1, 80th Legislature, Regular Session, 2007). Current rules for the HSC program limit payment rates to the amount of funds appropriated for the program. The proposed amendment will not change this limitation.

Section-by-Section Summary

The amendment removes an incorrect reference in subsection (a) to "state operated" and in subsection (j)(1) and (2) to "non-state operated" HCS providers, since these rules apply to all HCS providers and not just state operated providers.

The amendment deletes subsection (a)(3) regarding annually inflating rates in the rate model, since the rates are determined on the state's biennium.

The amendment deletes subsections (b) - (o) from the rules. These changes: (1) remove references to collecting a sample of cost data from providers since all providers are required to submit cost reports; and (2) remove redundant rule language because the language is already incorporated into the rule by reference. The rule references the cost determination process rules at §§355.101 - 355.110, which standardize key rules for all long-term care programs. Therefore, any duplication of rule language to the contents of these sections (§§355.101 - 355.110) has been removed from §355.722.

Under new subsections (c) and (d), the amendment adds references to the cost determination process rules regarding desk reviews and field audits to standardize these rules with other long-term care rules.

The amendment eliminates outdated subsections (r) and (s) and certain provisions of (v) - related to cost reports and fiscal accountability for past periods of time no longer in effect.

The amendment replaces the references in subsection (v) (now subsection (j)) to the Texas Department of Mental Health and Mental Retardation (TDMHMR) with references to the Department of Aging and Disability Services (DADS).

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five year period the amended rule is in effect, there will be no additional cost to the state for each state fiscal year the rule is implemented. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of these proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider. In addition, current rules for these programs limit payment rates to the amount of funds appropriated for the program. The proposed elimination of the rebasing process, including elimination of language regarding annual inflation, does not change this limitation.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that obsolete and duplicative rule language will be eliminated and the rules will reflect the actual method used to collect costs that are used to determine rates effective September 1, 2007.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Carolyn Pratt in the HHSC Rate Analysis Department by telephone at (512) 491-1359 or by facsimile at (512) 491-1998. Written comments on the proposal may be submitted to Ms. Pratt by facsimile, by e-mail to carolyn.pratt@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for July 16, 2007, at 10:00 a.m. in the HHSC Lone Star Conference Room at the Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of

HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.722. Reporting Costs by Home and Community-based Services (HCS) Providers.

(a) On an annual basis, all [~~state-operated~~] HCS providers must submit cost reports as directed by HHSC or its designee and in accordance with this subchapter. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Direct service costs are defined to include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care workers, registered nurses, licensed vocational nurses, and other personnel who provide activities of daily living training and clinical program services. Direct service costs include: costs related to wage rates, benefits, payroll taxes, contracts for direct services, and direct service supervision information. Accrued leave (sick or vacation) can only be considered a direct service cost if the employee has a right to a cash value of that leave upon termination.

(2) For staff whose duties include work other than the provision of direct services, the proportion of work that is spent on direct services may be included in the direct service costs. The proportion of their salary and benefits that are compensation for direct services work can be included in the direct service cost report only to the extent that the salary and benefits for this direct service work must be the lesser of the actual wages and benefits or the wages and benefits for a comparable direct care workers assumed in the model. The provider must have a procedure that specifies how direct service work time is allocated.

~~[(3) The direct service portions of the current rate model are inflated on an annual basis as specified in §355.723(g)(1) of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS)). This will increase the indirect part of the rate proportionately.]~~

(3) [~~(4)~~] Providers must report the following costs:

(A) Staff wages related to the delivery of direct services including residential assistance, day habilitation services, and the direct supervision of the delivery of these services.

(B) These costs may be either the HCS provider's actual expense or contracted expenditures.

~~[(b) HHSC will select a sample of non-state operated HCS providers which will be required to submit a full and accurate account of all costs related to the provision of services for an HCS provider's fiscal year in order to collect data for the analysis referenced in §355.723(g)(2) of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS).]~~

~~[(c) HHSC will conduct desk audits of all full cost reports and/or direct service cost reports, and will conduct on-site reviews of a sample of providers submitting cost reports.]~~

~~[(d) Record keeping requirements. Each HCS provider must retain records according to HHSC's requirements. HCS providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information provided to HHSC.]~~

~~[(e) Noncompliance with record keeping requirements. Failure to maintain records that support the information submitted to HHSC constitutes a violation of the HCS provider contract.]~~

~~[(f) Allowable and unallowable costs. HCS providers must complete cost reports in accordance with this subchapter.]~~

~~[(g) Certification. HCS providers must certify the accuracy of cost reports submitted to HHSC. HCS providers may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC requirements.]~~

~~[(h) Due date. HCS providers must submit direct service cost reports no later than 90 calendar days after the end of the reporting period or 90 days after the date that HHSC mails the form to the HCS provider, whichever is later. HCS providers must submit full cost reports no later than 90 days after the reporting period or 90 days after the date that HHSC mails the form to the HCS provider, whichever is later.]~~

~~[(i) Extension of due date. HHSC may grant extensions of due dates for good cause. Good cause is defined as one that the HCS provider could not reasonably be expected to control. An HCS provider must submit a request for extension in writing to HHSC before the cost report due date. HHSC will respond to a request for extension within 10 working days of its receipt.]~~

~~[(j) Cost data. HHSC may at times require additional financial and statistical information to ensure the fiscal integrity of the HCS Program. Each provider must submit additional information to HHSC upon request, unless the information is not at the HCS provider's disposal.]~~

~~[(k) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes a violation of the HCS provider contract.]~~

~~[(l) Review of cost data. HHSC or its designee reviews each HCS provider's cost data to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to HHSC's instructions or rules may be returned to the HCS provider for proper completion.]~~

~~[(m) On-site audits. TDMHMR or its designee performs a sufficient number of on-site financial audits to ensure the fiscal integrity of the HCS Programs. The number of on-site audits performed may vary.]~~

~~[(n) On-site audit standards. HHSC performs on-site financial audits in a manner consistent with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the United States Comptroller General.]~~

~~[(o) Access to records. Each HCS provider must allow access to HHSC to any and all records necessary to verify cost data submitted to HHSC. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the HCS provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from HHSC constitutes a violation of the HCS provider contract. If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the~~

provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state may be found in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).]

(b) [(p)] Reviews of exclusions or adjustments. An HCS provider who disagrees with HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(c) Field audit and desk review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(d) [(q)] Notification of exclusions and adjustments. HHSC will notify an HCS provider of the results of a desk review or field audit [exclusions and any adjustments, including caps applied, to reported costs] in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). [§355.705 of this title (relating to Notification).]

[(r) The information in subsections (d) - (p) of this section applies to cost reports pertaining to provider's fiscal years ending in calendar year 2001, 2002 and 2003.]

[(s) For cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years the following applies:]

(e) [(1)] Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(f) [(2)] Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs) [, in addition to the following].

(g) [(3)] Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) [(t)] Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs and subsection (a)(2) of this section. Owner and related party employees who provide both direct care and indirect services must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). The maximum hours per fiscal year that an owner and related party employee may report on the cost report is 2080 hours per fiscal year.

(i) [(u)] Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(j) [(v)] Fiscal Accountability.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the [non-state operated] reimbursement rates.

(2) Annual reporting. Fiscal accountability will consist of the annual reporting of the direct service costs including wages, and benefits, from all [non-state operated] HCS providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(A) The Department of Aging and Disability Services (DADS) [TDMHMR] will place a vendor hold on payments to an HCS provider whose provider agreement is being assigned or terminated. The HCS provider will submit a cost report for the current reporting period to HHSC. Upon receipt of an appropriate cost report and repayment of any amounts due to HHSC in accordance with this section, the vendor hold will be released.

(B) HCS providers are exempt from submitting cost reports in accordance with this section for the portion of their programs that convert to the Mental Retardation Local Authority (MRLA Program) for the fiscal year in which the conversion occurred.

(3) HHSC will require HCS providers to report all direct costs incurred on an annual fiscal year basis. HHSC will compare the reported direct service costs to the total direct service revenue.

[(4) Paragraph (5) of this subsection applies to that portion of the HCS provider's fiscal year that occurs after April 5, 1998. Paragraph (6) of this subsection, concerning the following fiscal accountability repayment, applies to that portion of the provider's fiscal year that begins on or after January 1, 1999.]

[(5) Direct service revenues are calculated by multiplying the number of units eligible for payment that have been paid, for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.]

[(A) HCS providers whose direct service costs are 85% or more of the direct service revenues will not be subject to repayment under this section.]

[(B) HCS providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to TDMHMR the difference between the direct service costs and 95% of the direct service revenues.]

[(C) HCS providers whose direct service costs are between 80% and 85% of the direct service revenues will be required to pay to TDMHMR 100% of the difference between the direct service costs and 85% of the direct service revenues.]

(4) [(6)] Direct Service Revenues are calculated by multiplying the number of units eligible for payment that have been paid for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(A) HCS providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) HCS providers whose direct service costs are between 85% and 90% of the direct service revenues will be required to pay to DADS [TDMHMR] 50% of the difference between the direct service costs and 90% of the direct service revenues.

(C) HCS providers whose direct service costs are between 80% and 85% of the direct service revenues will be required to

pay to DADS [~~TDMHMR~~] 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(D) HCS providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to DADS [~~TDMHMR~~] the difference between the direct service costs and 95% of the direct service revenues.

(5) [~~(7)~~] Where applicable, HCS providers will be notified of the requirement to repay revenues within 90 days of submitting their cost reports. An HCS provider's repayment status may change as a result of the desk reviews or outside audits of cost reports, or adjustments to claims paid to the HCS provider for services provided in the cost reporting period. HCS providers will submit the repayment amount within 60 days of notification.

(6) [~~(8)~~] Repayment will be made by the following:

(A) the HCS provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(7) [~~(9)~~] HCS providers required to repay revenues to DADS [~~TDMHMR~~] will be jointly and severally liable for any repayment. DADS [~~TDMHMR~~] will apply a vendor hold on Medicaid payments to a HCS provider for not making the payment to DADS [~~TDMHMR~~] within 60 days of receiving notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §355.723

The Health and Human Services Commission (HHSC) proposes an amendment to §355.723, concerning the reimbursement methodology for the Home and Community-Based Services (HCS) program.

Background and Justification

HHSC sets payment rates to be paid to HCS providers annually, and this rule sets out the reimbursement methodology that is used to set those rates. HHSC, under its authority and responsibility to administer and implement rates, is updating the reimbursement methodology by eliminating the rebasing process. The amended rule will reflect the method used to determine rates effective September 1, 2007.

The amendment to this rule is made in accordance with the appropriations under the 2008 - 09 General Appropriations Act (Article II, Special Provisions, Section 57(b)(1), H.B. 1, 80th Legislature, Regular Session, 2007). Current rules for the HSC program limit payment rates to the amount of funds appropriated for the program. The proposed amendment will not change this limitation.

Section-by-Section Summary

The amendment deletes the rebasing process to determine rates for the HCS program in subsections (c), (e), (f), and (g). The process of using a consultant and advisory panel is no longer used for rate determination in this program. The current process, which will be used for rate determination effective September 1, 2007, will update the modeled rates based on audited cost report cost data submitted by HCS providers to the extent possible within the appropriations for the 2008 - 2009 biennium.

The amendment to subsection (e) (now subsection (d)) clarifies that the rates are determined on the state biennium with the addition of a cross reference to §355.722 in this subchapter.

The amendment removes references in subsections (c) and (e) to collecting a sample of cost data from providers since all providers are required to submit cost reports.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five year period the amended rule is in effect there will be no additional cost to the state for each state fiscal year the rule is implemented. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of these proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider. In addition, current rules for these programs limit payment rates to the amount of funds appropriated for the program. The proposed elimination of the rebasing process does not change this limitation.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that obsolete rule language will be eliminated and the rules will reflect the actual method used to determine rates effective September 1, 2007.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the

public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Carolyn Pratt in the HHSC Rate Analysis Department by telephone at (512) 491-1359 or by facsimile at (512) 491-1998. Written comments on the proposal may be submitted to Ms. Pratt by facsimile, by e-mail to carolyn.pratt@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for July 16, 2007, at 10:00 a.m. in the HHSC Lone Star Conference Room at the Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code Chapter 32.

The proposed amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.723. Reimbursement Methodology for Home and Community-Based Services (HCS).

(a) HHSC sets payment rates to be paid to HCS providers annually. Rates are prospective in nature.

(b) Reimbursement rates apply to all non-state operated HCS providers uniformly by type of service component provided and the individual's level-of-need. Reimbursements for state-operated HCS providers are adjusted based on allowed costs reported at the end of the state fiscal year, in accordance with this subchapter. The state-operated cost adjustment will not exceed allowable federal maximums.

~~[(c) Modeled rates are based on relevant cost information including a sample of historical cost information and operational experience of HCS service providers in Texas. The modeled rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.]~~

(c) ~~[(d)]~~ Rates vary by level of need for residential support, supervised living, HCS foster/companion care, and day habilitation.

(d) ~~[(e)]~~ The recommended modeled rates ~~[effective January 1, 1997,]~~ are based on cost components deemed appropriate for a provider. The determination of these components is based on cost reports submitted by HCS providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) Providers). ~~[historical cost and operational information collected from a representative sample of HCS providers. An advisory panel consisting of providers, advocates, an independent firm and HHSC and TDMHMR personnel, will analyze available information regarding historical cost and operational data and level-of-need assessment. The analysis will result in recommendations to the board for rates which are reasonable and adequate.]~~

~~[(f) The modeled rate for a service component developed or modified after January 1, 1997, but prior to the rebasing process initiated under subsection (g) of this section, and provided after the effective date of this rule, will be based on cost assumptions used in modeling existing rates, actual or projected utilization patterns, and the recommendations of an advisory panel consisting of program providers, department personnel, and advocates for persons with mental retardation.]~~

(e) ~~[(g)]~~ The rates are derived for each type of service and, when appropriate, each level-of-need and include the following cost factors: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); non-personnel operating costs; facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administrative costs; and professional consultation and program support costs.

~~[(1) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the direct cost portion of the previous year's rates by the Personal Consumption Expenditure (PCE) Chain-Type Index.]~~

~~[(2) The modeled rates will be analyzed to determine if rebasing is necessary for the rates effective September 1, 2001, using the following process:]~~

~~[(A) HHSC will seek to obtain a consultant to perform a detailed analysis of cost and operational information for a sample of providers throughout the state.]~~

~~[(B) Site visits will be made to each of the sample HCS providers to collect cost data and discuss operations.]~~

~~[(C) An advisory panel will be formed consisting of service providers, advocates, and HHSC and TDMHMR personnel who will analyze available information regarding historical cost and operational data and level-of-need assessment.]~~

~~[(D) The advisory panel, HHSC, TDMHMR, and the independent firm will recommend adjustments to rate factors if required, based on the results of the analysis of the sample of cost and operational information.]~~

(f) ~~[(3)]~~ Refinement/adjustment of the cost factors and model assumptions will be considered, as appropriate, by HHSC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.7103, Rate-Setting Methodology for 24-Hour Residential Child Care Reimbursements in its Reimbursement Rates Chapter.

Background and Purpose

The background and purpose of the amendment is twofold: 1) propose a new rate determination methodology for the Department of Family and Protective Services' (DFPS) Psychiatric Step-Down program for children in DFPS conservatorship; and 2) provide the method for determining payment rates effective September 1, 2007, for the 24-Hour Residential Child Care Program.

DFPS is proposing program rules for a new Psychiatric Step-Down program in this issue of the *Texas Register*. This program will be for children in DFPS conservatorship who have extreme behaviors and histories of inpatient psychiatric care to assist them in transitioning to more traditional Child Protective Services residential care settings. HHSC is proposing a rule amendment at 1 TAC §355.7103(p) that will allow payment rates for this program to be determined on a pro forma approach in accordance with existing rules at 1 TAC §355.105(h), relating to General Reporting and Documentation Requirements, Methods, and Procedures. Section 355.105(h) states that if insufficient data are available to determine payment rates using cost reports, rates may be based on a pro forma analysis by HHSC staff. A pro forma analysis is defined as an item-by-item, or classes-of-items, calculation of the reasonable and necessary expenses for a provider to operate.

Appropriations for the DFPS 24-Hour Child-Care Program for the state fiscal years 2008 through 2009 are anticipated to increase by an amount sufficient to support an average rate increase of 4.3 percent above current rates for this program. The amendment to §355.7103(m) provides that, for foster families, the rates effective September 1, 2007 through August 31, 2009, for each level of service will be equal to the minimum rate paid to foster families for that level of service in effect August 31, 2007, plus 4.3 percent. As well, the amendment provides that, for Child Placing Agencies (CPAs), the rates effective September 1, 2007 through August 31, 2009, for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2007, plus 4.3 percent. Remaining appropriated funds shall be distributed proportionally across all other types of providers of foster care based on each provider type's ratio of costs as reported on the most recently audited cost report to existing payment rates. The remaining subsections of §355.7103 have been re-lettered to accommodate the new language in subsection (m).

Fiscal Note

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five year period the proposed section will be in effect there are foreseeable fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five years the proposed amendment is in effect is an estimated additional cost of $10,314,152 in fiscal year (FY) 2008; $11,100,462 in FY 2009; $11,688,055 in FY 2010; $12,422,764 in FY 2011; and $13,194,332 in FY 2012.

Small Business and Micro-business Impact Analysis

Ms. Brown has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years that the proposed amendments will be in effect, the public benefit anticipated as a result of the rule change will be that a post hospitalization "step-down" program will be available for children with extreme behaviors and histories of inpatient psychiatric care episodes to assist them in transitioning into more traditional residential care settings. In addition, there will be an increase in rates paid to foster families and providers of 24-hour residential child care, which should help to encourage more foster family applications and provide financial cost-of-living increases to foster families. In addition, increased payment rates for other providers of 24-hour residential child care will allow providers to cover more of their costs of serving these children. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Pam McDonald in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax (512) 491-1998 or by e-mail at pam.mcdonald@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Government Code §531.055, which authorizes the executive commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; and the Human Resources Code,

§40.004(c) and (d), which authorize the executive commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule.

The proposed amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.7103. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) - (l) (No change.)

(m) For the state fiscal year 2008 through 2009 biennium, for foster families, the payments effective September 1, 2007 through August 31, 2009 for each level of service will be equal to the minimum rate paid to foster families for that level of service in effect August 31, 2007 plus 4.3 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2007, through August 31, 2009 for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2007, plus 4.3 percent. Additional appropriated funds remaining after the rate increase for foster families and CPAs shall be distributed proportionally across general residential operations and residential treatment centers based on each of these provider type's ratio of costs as reported on the most recently audited cost report to existing payment rates.

(n) [~~(m)~~] HHSC may adjust payment rates, if determined appropriate, when federal or state laws, rules, standards, regulations, policies, or guidelines are changed or adopted. These adjustments may result in increases or decreases in payment rates. Providers must be informed of the specific law, rule, standard, regulation, policy or guideline change and be given the opportunity to comment on any rate adjustment resulting from the change prior to the actual payment rate adjustment.

(o) [~~(n)~~] To implement Chapter 1022 of the Acts of the 75th Texas Legislature, §103, the executive director may develop and implement one or more pilot competitive procurement processes to purchase substitute care services, including foster family care services and specialized substitute care services. The pilot programs must be designed to produce a substitute care system that is outcome-based and that uses outcome measures. Rates for the pilot(s) will be the result of the competitive procurement process, but must be found to be reasonable by the executive director. Rates are subject to adjustment as allowed in subsections (a) and (m) of this section.

(p) Payment rates for psychiatric step-down services are determined on a pro forma basis in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
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Texas Health and Human Services Commission
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SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061

The Health and Human Services Commission (HHSC) proposes an amendment to §355.8061, concerning the payment of hospital services, in Chapter 355, Reimbursement Rates.

Background and Justification

High-volume providers of Medicaid covered services receive enhanced payments. The purpose of this amendment to §355.8061(a)(2) is to update the base year for determining which outpatient hospitals qualify as high-volume providers. The rule currently identifies a high-volume outpatient hospital provider as a provider that was paid $200,000 during calendar year 2000. The amendment will change the qualification period from calendar year 2000 to calendar year 2004 and allows HHSC to use a more current base year in determining the outpatient hospital providers who qualify for high-volume payments.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five year period the amended rule is in effect there will be no additional costs or savings for each state fiscal year the rule is implemented. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs. HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect a local economy.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendment, since providers will continue to be reimbursed under their current reimbursement rate.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected is that HHSC will use a more current base year in determining the outpatient hospital providers who qualify for the high-volume payments.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Alisa Jacquet (telephone: (512) 491-1432; FAX: (512) 491-1998) in HHSC Rate Analysis for Hospital Acute Care Services. Written comments on the proposal may be submitted to Ms. Jacquet via facsimile, E-mail to alisa.jacquet@hhsc.state.tx.us, or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties, and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The proposed amendment affects Texas Government Code, §531.033 and §531.021(b) and Chapter 32 of the Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§355.8061. Payment for Hospital Services.

(a) The Health and Human Services Commission (commission) or its designated agent shall reimburse hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in paragraphs (1) - (4) of this subsection.

(1) The amount payable for inpatient hospital services shall be determined as specified in §355.8063 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services).

(2) The amount payable for outpatient hospital services shall be determined under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982 through July 31, 2000, by Public Law 97-248, except as may be otherwise specified by the Health and Human Services Commission. For the period of September 1, 1999 through and including September 30, 2001, payments to all providers were at 80.3% of allowed costs. For the period beginning October 1, 2001, Medicaid reimbursement for outpatient hospital services for high-volume providers, as defined by the commission, shall be at 84.48% of allowable cost. For the remaining providers, reimbursement for outpatient hospital services shall be at 80.3% of allowable cost. For the purpose of establishing the proposed discount factor, a high-volume provider is defined as one, which is paid at least $200,000 during calendar year 2004 [~~2000~~]. Any subsequent changes to the discount will require HHSC to hold a public hearing on proposed reimbursements before the HHSC approves any changes. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed change will be made available to the public. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to the HHSC. Reimbursement for outpatient hospital surgery is limited to the lesser of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital's actual charge, the hospital's customary charge, or the allowable cost determined by the commission or its designee.

(3) - (5) (No change.)

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §355.8063

The Health and Human Services Commission (HHSC) proposes to amend §355.8063, concerning the Reimbursement Methodology for Inpatient Hospital Services.

Background and Justification

As required by the 2008-09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 52, H.B. 1, 80th Legislature, Regular Session, 2007), the proposed amendments change the Medicaid reimbursement methodology for inpatient hospital services. Specifically, HHSC proposes to amend §355.8063, subsections (h), (n)(2) and (q).

Section-by-Section Summary

Currently, there are provisions in §355.8063(h) and (n)(2) that expire on August 31, 2007. HHSC uses Standard Dollar Amounts in the calculation of inpatient hospital reimbursement rates. Based on Medicaid appropriations for fiscal year 2008, the amendment to §355.8063(h) will extend the time period during which HHSC will not rebase or recalculate the Standard Dollar Amounts (SDAs) to August 31, 2008. The exception will be that HHSC will partially rebase state-owned teaching hospitals effective September 1, 2007, ending August 31, 2008, based on fiscal year 2003 cost data inflated to fiscal year 2005 using a cost-of-living index, adjusted proportionately to available funds. The state-owned teaching hospitals will then be rebased with all other eligible hospitals in fiscal year 2009 based on available appropriations. Also based on fiscal year 2008 Medicaid appropriations, the amendment to §355.8063(n)(2) will extend the period for which the cost of living index is not applied to the SDAs to August 31, 2008.

Section 355.8063(q) is amended as required by the 2008-09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 52, H.B. 1, 80th Legislature, Regular Session, 2007). This amendment changes the categories of hospitals that are eligible to receive the greater of Diagnosis Related Group (DRG) or Tax Equity and Fiscal Responsibility Act (TEFRA) reimbursement based on cost settlement. The amendment specifies that until HHSC implements a new reimbursement system for Fee-for-Service (FFS) and Primary Care Management (PCCM) inpatient services, hospitals are eligible to receive the greater of DRG or TEFRA reimbursement for FFS and PCCM services if, as of September 1, 2007, the hospital is: 1) located in a county with 50,000 or fewer persons, or 2)

a Medicare-designated Rural Referral Center or Sole Community Hospital not located in a metropolitan statistical area, or 3) a Medicare-designated Critical Access Hospital. Hospitals reimbursed by cost settlement under TEFRA cost principles will not be subject to the TEFRA cap.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be a net cost of approximately $3.9 million in general revenue and approximately $5.9 million in federal funds for each state fiscal year the rule is implemented. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs. HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect a local economy.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendment, since providers will continue to be reimbursed under their current reimbursement rate.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each year of the first five years the amendment is in effect, the public will benefit because HHSC's Medicaid inpatient hospital reimbursement will be consistent with appropriated funds, and hospitals that are located in a county with 50,000 or fewer persons, or a Medicare-designated Rural Referral Center or Sole Community Hospital not located in a metropolitan statistical area, or a Medicare-designated Critical Access Hospital will receive the greater of DRG or TEFRA reimbursement for Medicaid services.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Alisa Jacquet (telephone: (512) 491-1432; FAX: (512) 491-1998) in HHSC Rate Analysis for Hospital Acute Care Services. Written comments on the proposal may be submitted to Ms. Jacquet via facsimile, E-mail to alisa.jacquet@hhsc.state.tx.us, or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The proposed amendment affects Texas Government Code, §531.033 and §531.021(b) and Chapter 32 of the Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§355.8063. Reimbursement Methodology for Inpatient Hospital Services.

(a) - (g) (No change.)

(h) Rebasing the standard dollar amounts. The HHSC or its designee rebases the standard dollar amount for each payment division at least every three years. HHSC will not rebase or recalculate the standard dollar amounts for each payment division for admissions during the period September 1, 2003 through August 31, 2008. HHSC will partially rebase state-owned teaching hospitals effective September 1, 2007 ending August 31, 2008, based on FY 2003 cost data inflated to FY 2005 using a cost-of-living index, adjusted proportionately to available funds. [~~2007.~~] The relative weights are recalibrated whenever the standard dollar amounts are recalculated. The standard dollar amounts are not rebased on an interim basis unless the HHSC or its designee determines that special circumstances warrant rebasing.

(i) - (m) (No change.)

(n) Adjustments to base year claims data.

(1) Beginning with 1985 hospital fiscal year cost reporting periods, the HHSC or its designee adjusts each hospital's base year claims data and resulting payment division and standard dollar amount to reflect the interim rate established at tentative and final settlement, if applicable, of the cost reporting period associated with the base year. The adjustments are applied only to claims data for months within the base year that coincide with months within the hospital's cost reporting period. The claims data for months within the base year that do not coincide with months within the hospital's cost reporting period remain unchanged until the tentative or final settlement of the cost reporting period containing those months has been completed. The adjustments are applied to the next prospective year beginning September 1, 1988, except as specified in subparagraphs (A), (B), and (C) of this paragraph.

(A) If the tentative or final settlement is not completed and available at least 60 days before the beginning of the next prospective year, any adjustment required because of the settlement is applied to the subsequent prospective year.

(B) If a review or appeal of a tentative or final settlement is not completed at least 60 days before the beginning of the next prospective year, the interim rate applied to the claims data on which the hospital's payment division and standard dollar amount are established is the interim rate established at tentative or final settlement by the department or its designee. Any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year.

(C) The HHSC or its designee makes a March 1, 1988, adjustment.

(2) The HHSC or its designee updates the standard dollar amount each year for each payment division by applying a cost-of-living index to the standard dollar amount established for the base year. The cost-of-living index for state fiscal years 2003, 2004, 2005, 2006, 2007 and 2008 [~~2007~~] will not be applied to the standard dollar amount for admissions during the period September 1, 2003 through August 31, 2008 [~~2007~~]. The index used to update the standard dollar amounts is the greater of:

(A) the Health Care Financing Administration's (HCFA) Market Basket Forecast (PPS Hospital Input Price Index) based on the report issued for the federal fiscal year quarter ending in March of each year, adjusted for the state fiscal year by summing one-third of the annual forecasted rate of the index for the current calendar year and two-thirds of the annual forecasted rate of the index for the next calendar year; or

(B) an amount determined by selecting the lesser of the following two measures:

(i) the change in total charges per case for the latest year available compared to total charges per case for the previous year; or

(ii) the change in the Texas medical consumer price index-urban (that is, the arithmetic mean of the Houston and Dallas/Fort Worth medical consumer price indices for urban consumers) for the latest year available compared to the Texas medical consumer price index-urban for the previous year.

(o) - (p) (No change.)

(q) Hospitals in counties with 50,000 or fewer persons and certain other hospitals. Hospitals will be reimbursed the greater of the prospective payment system rate or a cost-reimbursement methodology authorized by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) using the most recent data if, as of September 1, 2007, the hospital is:

(1) located in a county with 50,000 or fewer persons or;

(2) a Medicare-designated Rural Referral Center (RRC) or Sole Community Hospital (SCH) not located in a metropolitan statistical area (MSA), as defined by the U.S. Office of Management and Budget; or

(3) a Medicare-designated Critical Access Hospital (CAH), shall be reimbursed the greater of the prospective payment system rate or a cost-reimbursement methodology authorized by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) using the most recent data. Hospitals reimbursed under TEFRA cost principles will be paid without the imposition of the TEFRA cap.

[~~(q) Hospitals with 100 or fewer licensed beds and certain hospitals with more than 100 licensed beds. The policies in this subsection apply only to hospital fiscal years beginning on or after September 1, 1989 for hospitals with 100 or fewer licensed beds at the beginning of the hospital's fiscal year or hospital fiscal years beginning on or after September 1, 2003 for hospitals with more than 100 licensed beds at the beginning of the hospital's fiscal year, located in a county that is not in a metropolitan statistical area (MSA) as defined by the U.S. Office of Management and Budget (OMB) and designated by the Center for Medicare & Medicaid Services as a Sole Community Provider (SCH) or Rural Referral Center RCC. At tentative cost settlement of the hospital's fiscal year (with subsequent adjustment at final cost settlement, if applicable), the HHSC or its designee determines what the amount of reimbursement during the fiscal year would have been if the HHSC or its designee reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). This determination is made without imposing a TEFRA cap. If the amount of reimbursement under the TEFRA principles is greater than the amount of reimbursement received by the hospital under the prospective payment system, the HHSC or its designee reimburses the difference to the hospital.~~]

(r) - (w) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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1 TAC §355.8065

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8065, concerning the Additional Reimbursement to Disproportionate Share Hospitals.

Background and Justification

Acute care hospitals (except state teaching hospitals covered under §355.8067) participating in the Texas Medicaid Program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement from the disproportionate share hospital fund. HHSC, as the Medicaid single state agency, establishes each hospital's eligibility for reimbursement and the amount of reimbursement as specified in this rule.

The damage caused by Hurricanes Katrina and Rita in 2005 demonstrated the need for HHSC to be able to address a situation where a hospital is located in a county declared to be a federal natural disaster area, and due to the disaster, the hospital may have its qualification disrupted. The Legislature expressed its intent in the 2008-09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 65, H.B. 1, 80th Legislature, Regular Session, 2007) that HHSC consider and compensate for the negative impact on DSH funding to hospitals located in counties whose population has changed as a result of a federally declared natural disaster. Under this amendment, acute care hospitals (except state teaching hospitals) that are impacted as a result of a federally declared natural disaster will have the opportunity to request that their disproportionate share funding not be impacted in an adverse manner.

In addition, HHSC needs to amend this rule to update the conversion factors that expire August 31, 2007, and to update cost report citations. These changes will ensure equitable funding to DSH safety net hospitals for State Fiscal Years 2008 and 2009 and will ensure the State obtains accurate data.

Section-by-Section Summary

The amendment to §355.8065(f)(2)(D) updates the conversion factors, which will expire August 31, 2007, for State Fiscal Years 2008 and 2009. This change ensures that proper payments are made to select hospitals receiving payments in the dispropor-

tionate share hospital (DSH) program using the cost conversion methodology that is effective September 1, 2007.

The amendment to §355.8065(f)(2)(E)(ii) updates a reference in the rule to a worksheet page in the Centers for Medicare and Medicaid Services (CMS) Hospital and Hospital Health Care Complex Cost Report. This change is needed due to revisions to the cost report format.

The amendment adds new §355.8065(j) to the rule to address the process for qualification and payment of disproportionate share hospital funds to an acute care hospital (except a state teaching hospital) located in a county that is a federally declared natural disaster area. Under this new section, if population driven qualification and reimbursement factors are affected by a federally declared natural disaster, resulting in a negative impact to the hospital's DSH funding, the hospital will be able to request a review of that data for the upcoming year at the time the hospital submits the annual DSH program application. If the request is approved, the State will use the hospital's data from the most recent year prior to the natural disaster for qualification and reimbursement purposes. This new section is added in response to 2008-09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 65, H.B. 1, 80th Legislature, Regular Session, 2007).

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. These changes may impact the allocation of a sum certain amount of DSH funds among DSH-eligible hospitals. Local governments will not incur additional costs as a result of these amendments.

Small Business and Micro-business Impact Analysis

Mr. Suehs has also determined that there is no adverse economic effect on small businesses or micro-businesses, as a result of enforcing or administering the amendment. HHSC does not anticipate that there will be any economic costs to persons who are required to comply with the proposed amendment. HHSC does not anticipate any negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that the conversion factors will reflect accurate calculations for cost containment DSH adjustments, there will be an accurate reference to the CMS cost report, and providers that are impacted as a result of a federally declared natural disaster will have the opportunity to request that their disproportionate share funding not be impacted in an adverse manner.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would other wise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Public Comment

Written comments on the proposal may be submitted to Henry Welles, Rate Analyst for Hospital Acute Care Services, by mail at HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, by facsimile to (512) 491-1998, or by e-mail to Henry.Welles@hhsc.state.tx.us, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Human Resources Code Chapter 32.

The proposed amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8065. Additional Reimbursement to Disproportionate Share Hospitals.

(a) - (e) (No change.)

(f) Reimbursing Medicaid disproportionate share hospitals. The commission shall reimburse Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Before the start of the next state fiscal year, the commission determines the size of the available funds to reimburse disproportionate share hospitals for the next state fiscal year, which begins each September 1. The funds available to reimburse the state chest hospitals and state mental hospitals equal the total of their adjusted hospital specific limits. The available fund for the remaining hospitals equals the lesser of the funds remaining in the state's annual disproportionate share allotment or the sum of qualifying hospitals' adjusted hospital specific limits. Payments shall be made in the following manner, unless the commission determines the hospital's proposed reimbursement has exceeded its specific limit.

(1) A state chest hospital meets the requirements for disproportionate share status and provides inpatient hospital services receives annually up to 175 percent f its adjusted hospital specific limit. A state mental hospital that meets the requirements of disproportionate share status and provides inpatient psychiatric services receives 100 percent of its adjusted hospital specific limit.

(2) For the remaining hospitals, payments will be made based on both weighted inpatient Medicaid days and weighted low-income days. The commission weights each hospital's total inpatient

Medicaid days and low-income days by the appropriate weighting factor. The commission defines a low-income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending the previous calendar year by its low-income utilization rate. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs shall receive weights based proportionally on the MSA population according to the most recent decennial census. MSAs with populations greater than or equal to 121,000, according to the most recent decennial census, are considered "the largest MSAs." Children's hospitals also shall receive weights because of the special nature of the services they provide. All other hospitals receive weighting factors of 1.0. The inpatient Medicaid days of each hospital shall be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund shall be divided into two parts. One half of the available fund will reimburse each qualifying hospital by its percent of the total inpatient Medicaid days. One-half of the available fund will reimburse each qualifying hospital by its percent of low income days. The commission determines whether hospitals in rural areas will receive 5.5% or more of the gross disproportionate share hospital funds for non-state hospitals. If hospitals in rural areas will receive at least 5.5% of the gross non-state hospital funds, the commission will reimburse them using existing principles. If hospitals in rural areas will not receive at least 5.5% of non-state hospital funds, the commission will reimburse them at 5.5 percent of non-state hospital funds, using existing principles. Reimbursement for the remaining hospitals is determined as follows:

(A) The single state agency or its designee determines the average monthly number of weighted Medicaid inpatient days and weighted low-income days of each qualifying hospital.

(B) A qualifying hospital receives a monthly disproportionate share payment based on the following formula:
Figure: §355.8065(f)(2)(B) (No change.)

(C) All MSA population data are from the most recent decennial census. The specific weights for certain hospital districts and children's hospitals are as follows:

(i) Children's hospitals are weighted at 1.25.

(ii) MSAs with populations greater than or equal to 121,000 and less than 300,000 are weighted at 2.75.

(iii) MSAs with populations greater than or equal to 300,000 and less than 1,000,000 are weighted at 3.0.

(iv) MSAs with populations greater than or equal to 1,000,000 and less than 3,000,000 are weighted at 3.25.

(v) MSAs with populations greater than or equal to 3,000,000 are weighted at 3.75.

(D) For state fiscal year 2008 [~~2006~~] (September 1, 2007 [~~2005~~] through August 31, 2008 [~~2006~~]), and state fiscal year 2009 [~~2007~~] (September 1, 2008 [~~2006~~] through August 31, 2009 [~~2007~~]), the monthly disproportionate share payment calculated under subparagraph (C) of this paragraph is subject to a conversion factor that is applied as follows:

(i) A conversion factor of 1.11 [~~1.10~~] is applied to payments made to hospital districts located in MSAs with populations greater than 3 million.

(ii) A conversion factor of 1.02 [~~1.01~~] is applied to payments made to hospital districts located in MSAs with populations between 1 and 3 million.

(iii) A conversion factor of .96 [~~.97~~] is applied to payments made to children's hospitals.

(iv) A conversion factor of .92 [~~.93~~] is applied to payments made to private, urban, general hospitals located in a MSA.

(v) A conversion factor of 1.0 is applied to payments made to all other hospitals.

(vi) For purposes of this section, a private, urban, general hospital is defined as a hospital that is not operated by a political subdivision of the state, is not licensed under Chapter 577, Health and Safety Code, to provide mental health services or is not exempted from the Medicare and Medicaid prospective payment systems as a children's hospital, and is eligible for additional reimbursement from the disproportionate share hospital fund.

(E) The commission or its designee determines the hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall, as defined in subsection (b)(16) of this section, and its cost of services to uninsured patients, as defined in subsection (b)(5) of this section, multiplied by the appropriate inflation update factor, as provided for in subsection (g)(2)(E) of this section.

(i) The Medicaid shortfall includes total Medicaid billed charges and any Medicaid payment made for the corresponding inpatient and outpatient services delivered to Texas Medicaid clients, as determined from the hospital's fiscal year claims data, regardless of whether the claim was paid. These denied claims include, but are not limited to, patients whose spell of illness claims were exhausted, or payments were denied due to late filing. See subsection (b)(16) of this section for definition of "Medicaid shortfall."

(ii) The total Medicaid billed charges for each hospital are converted to cost, utilizing a calculated cost-to-charge ratio (inpatient and outpatient). The commission or its designee determines that ratio by using the hospital's Form HCFA 2552, Hospital and Hospital Health Care Complex Cost Report, that was submitted for the fiscal year ending in the previous calendar year. The commission or its designee uses the latest available Medicaid cost report in the absence of the Medicaid cost report submitted in the fiscal year ending in the previous calendar year. To determine the cost-to-charge ratio (inpatient and outpatient) for each hospital, the commission or its designee uses the total cost from the HCFA 2552, Worksheet B, Part I, Column 25, and total charges from the HCFA 2552, Worksheet C, Part I, Column 8 [~~6~~]. The ratio is the total cost divided by the total gross patient charges.

(iii) The commission or its designee determines the cost of services to patients who have no health insurance or source of third party payments for services provided during the fiscal year for each hospital. Hospitals are surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. The charges from reporting hospitals are multiplied by each hospital's cost-to-charge ratio (inpatient and outpatient) to determine the cost.

(iv) After the commission or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payments for services provided during the year, the commission or its designee subtracts from each hospital's cost of services the amount of payments made by or on behalf of those patients who have no health insurance or source of third party payments for services provided during the year.

(F) The commission or its designee shall trend each hospital's "hospital specific limit" calculated from its historical base period cost report to the state's fiscal year disproportionate share program. For hospitals without a full 12-month fiscal year cost report, the commission or its designee shall convert their costs to annualized hospital specific limits. The commission or its designee shall use the

inflation rates described in subsection (b)(12) of this section. The commission or its designee shall calculate the number of months from the mid-point of the hospital's cost reporting period to the mid-point of the state fiscal year disproportionate share program. The commission or its designee shall then multiply the portion of the hospital's cost report year occurring in the state fiscal year by the inflation update factor used for each state fiscal year in the calculation of hospital reimbursement rates for each state fiscal year. The product of these calculations shall be multiplied by each hospital's "hospital specific limit" to obtain each hospital's "adjusted hospital specific limit."

(G) The commission or its designee compares the projected payment for each disproportionate share hospital, as determined by subsections (d) and (e) of this section, with its adjusted hospital specific limit, as determined by subparagraphs (E) and (F) of this paragraph. If the hospital's projected payment is greater than its adjusted hospital specific limit, the commission or its designee reduces the hospital's payment to its adjusted hospital specific limit.

(H) If there are disproportionate share hospital funds left in the available fund for the remaining hospitals, because some hospitals have had their disproportionate share hospital payments reduced to their adjusted hospital specific limits, the commission or its designee distributes the excess funds according to the provisions in this section. For hospitals whose projected disproportionate share hospital payments are less than their adjusted hospital specific limits, the commission or its designee does the following:

(i) calculate the difference between its adjusted hospital specific limit and its projected disproportionate share hospital payment;

(ii) add all of the differences from clause (i) of this subparagraph;

(iii) calculate a ratio for each hospital by dividing the difference from clause (i) of this subparagraph by the sum for clause (ii) of this subparagraph; and

(iv) multiply the ratio from clause (iii) of this subparagraph by the remaining available fund. Remaining Available Fund x

(I) Only those hospitals that are below their adjusted hospital specific limits are eligible to participate in this distribution. The disproportionate share hospital funds remaining in the available fund are distributed to the hospitals that have not already reached their adjusted hospital specific limits. Each hospital's total disproportionate share payment (including the redistribution of excess funds) cannot exceed its adjusted hospital specific limit.

(g) - (i) (No change.)

(j) If a hospital is located in a county that is declared a federal natural disaster area, it may request that the state use the hospital's data from the most recent year prior to the natural disaster for qualification and reimbursement purposes. This request must be submitted in writing to the state with the hospital's annual DSH application. The state reserves the right to approve or deny the written exception request and will notify the hospital of its decision prior to the beginning of the DSH program year. Hospitals may request an administrative review of the state's decision in this subsection. The review will be conducted under the provisions of subsection (g) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §355.8067

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8067, concerning the Disproportionate Share Hospital Reimbursement Methodology.

Background and Justification

State teaching hospitals participating in the Texas Medicaid Program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement from the disproportionate share hospital (DSH) fund. HHSC, as the Medicaid single state agency, establishes each hospital's eligibility for reimbursement and the amount of reimbursement as specified in this rule.

The damage caused by Hurricanes Katrina and Rita in 2005 demonstrated the need for HHSC to be able to address a situation where a hospital is located in a county declared to be a federal natural disaster area, and due to the disaster, the hospital may have its qualification disrupted. The Legislature expressed its intent in the 2008 - 09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 65, H.B. 1, 80th Legislature, Regular Session, 2007) that HHSC consider and compensate for the negative impact on DSH funding to hospitals located in counties whose population has changed as a result of a federally declared natural disaster. Under this amendment, state teaching hospitals that are impacted as a result of a federally declared natural disaster will have the opportunity to request that their disproportionate share funding not be impacted in an adverse manner.

In addition, HHSC needs to amend this rule to update cost report citations. This change will ensure the State obtains accurate data.

Section-by-Section Summary

The amendment to §355.8067(f)(1)(A) updates a reference in the rule to a worksheet page in the Centers for Medicare and Medicaid Services (CMS) Hospital and Hospital Health Care Complex Cost Report. This change is needed due to revisions to the cost report format.

The amendment adds new subsection (h) to the rule to address the process for qualification and payment of disproportionate share hospital funds to a hospital located in a county that is a federally declared natural disaster area. Under this new section, if population driven qualification and reimbursement factors are affected by a federally declared natural disaster, resulting in a negative impact to the hospital's DSH funding, the hospital will be able to request a review of that data for the upcoming year at the time the hospital submits the annual DSH program application. If the request is approved, the State will use the hospital's data from the most recent year prior to the natural disaster for qualification and reimbursement purposes. This new section is added in response to the 2008 - 09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 65, H.B. 1, 80th Legislature, Regular Session, 2007).

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. Local governments will not incur additional costs as a result of these amendments.

Small Business and Micro-business Impact Analysis

Mr. Suehs has also determined that there is no adverse economic effect on small businesses or micro-businesses, as a result of enforcing or administering the amendment. HHSC does not anticipate that there will be any economic costs to persons who are required to comply with the proposed amendment. HHSC does not anticipate any negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that there will be an accurate reference to the CMS cost report and providers that are impacted by a federally declared natural disaster will have the opportunity to request their disproportionate share hospital funding not be impacted in an adverse manner.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would other wise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Public Comment

Written comments on the proposal may be submitted to Henry Welles, Rate Analyst for Hospital Acute Care Services, by mail at HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, by facsimile to (512) 491-1998, or by e-mail to Henry.Welles@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Human Resources Code Chapter 32.

The proposed rule amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8067. Disproportionate Share Hospital Reimbursement Methodology.

(a) - (e) (No change.)

(f) The department or its designee determines the hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall, as defined in subsection (d)(5) of this section, and its cost of services to uninsured patients as defined in subsection (d)(3) of this section, multiplied by the appropriate inflation update factor, as provided for in subsection (g) of this section.

(1) The Medicaid shortfall includes total Medicaid billed charges and any Medicaid payments made for the corresponding inpatient and outpatient services delivered to Texas Medicaid clients, as determined from the hospital's fiscal year claims data, regardless of whether the claim was paid. These denied claims include, but are not limited to, patients whose spell of illness claims were exhausted, or payments were denied due to late filing. Refer to subsection (d)(5) of this section.

(A) The total billed Medicaid charges for each hospital are converted to cost, utilizing a calculated cost-to-charge ratio (inpatient and outpatient). The department or its designee determines that ratio by using the hospital's HCFA 2552-92, Hospital and Hospital Health Care Complex Cost Report, that was submitted for the fiscal year ending in the previous calendar year. The department or its designee uses the latest available Medicare cost report in the absence of the Medicare cost report submitted in the fiscal year ending in the previous calendar year. To determine the cost-to-charge ratio (inpatient and outpatient) for each hospital, the department or its designee uses the total cost from the HCFA 2552-92, Worksheet B, Part 1, Column 25, and total charges from the HCFA 2552-92, Worksheet C, Part 1, Column 8. [~~6.~~] The ratio is the total cost divided by the total gross patient charges.

(B) The department or its designee determines the cost of services to patients who have no health insurance or source of third party payments for services provided during the year for each hospital. Hospitals are surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. The charges are multiplied by each hospital's cost-to-charge ratio (inpatient and outpatient) to determine the cost.

(2) After the department or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payments for services provided during the year, the department subtracts from each hospital's cost of services the amount of payments made by or on behalf of those patients who have no health insurance or source of third party payments for services provided during the year.

(g) (No change.)

(h) If a hospital is located in a county that is declared a federal natural disaster area, it may request that the state use the hospital's data from the most recent year prior to the natural disaster for qualification and reimbursement purposes. This request must be submitted in writing to the state with the hospital's annual DSH application. The state reserves the right to approve or deny the written exception request and will notify the hospital of its decision prior to the beginning of the DSH program year. Hospitals may request an administrative review of the state's decision in this subsection. The review will be conducted under the provisions of §355.8065(g) of this title (relating to Additional Reimbursement to Disproportionate Share Hospitals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT) MEDICAL PHASE

1 TAC §355.8441

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8441, concerning Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services).

Elsewhere in this issue of the *Texas Register*, the HHSC contemporaneously withdraws the previously published proposed amendment to §358.8441. The amendment was published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2435). The amendment is withdrawn in order to consolidate the previous amendments with the current proposed amendments.

Background and Justification

The 2008-2009 General Appropriations Act (Article II, Special Provisions Relating to All Health and Human Services Agencies, Section 57(b)(3)(ii)(d), H.B. 1, 80th Legislature, Regular Session, 2007) increases Medicaid rates for therapy services delivered by home health agencies to Medicaid clients under age 21 to be more consistent with Medicaid fees paid to physicians and independently enrolled therapists for similar services. As a result, HHSC proposes to change the Medicaid reimbursement methodology for therapy services delivered to Medicaid clients under age 21 by home health agencies.

Alberto N. v. Hawkins was filed in 1999, in the U.S. District Court for the Eastern District of Texas. Plaintiffs were children who alleged they had been denied access to certain medically necessary in-home Medicaid service, including personal care services (PCS). To meet plaintiffs' needs and the needs of those similarly situated, HHSC is establishing a personal care services benefit designed especially for THSteps beneficiaries. Currently, personal care services for THSteps-eligible beneficiaries are available through the Primary Home Care program operated by the Department of Aging and Disability Services. The proposed new PCS benefit is expected to be operational by September 1, 2007. The personal care services benefit will be available to any THSteps-eligible beneficiary who requires assistance with activities of daily living, instrumental activities of daily living, and health-related functions due to a physical, cognitive, or behavioral limitation related to his or her disability or chronic health condition, regardless of diagnosis, type of illness, or condition. This proposed reimbursement methodology rule accompanies new personal care services program rules at 1 TAC §§363.601, 363.603, 363.605, and 363.607, which were previously proposed in the April 16, 2007, issue of the *Texas Register*. In conjunction with this rule, HHSC proposed new §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)) published in the May 11, 2007, issue of the *Texas Register*.

Section-by-Section Summary

Proposed §355.8441, paragraphs (5), (6), and (7), are being revised to reimburse home health agencies the lesser of their billed charges for a specific physical, occupational, or speech therapy service or the fee established by HHSC. The proposed fee established by HHSC will be based on a review of Medicaid and Medicare fees for similar services; an analysis of cost reports provided by home health agencies; modeling, using other data available to HHSC such as relevant cost or fee surveys; or a combination thereof, with any adjustments necessary to remain within available funds.

Proposed §355.8441(12)(A) provides that the reimbursement methodology for personal care services delivered by school districts is located at §355.8443, relating to the Reimbursement Methodology for School Health and Related Services (SHARS).

Proposed §355.8441(12)(B) describes the reimbursement methodology for personal care services delivered by providers other than school districts as fees determined by HHSC or its designee using at least one of the following methods: a review of rates paid to providers delivering similar services; modeling using an analysis of other data available to HHSC; or a combination of the two. Personal care services delivered under the Consumer Directed Services (CDS) payment option will be reimbursed in accordance with §355.114, relating to the Consumer Directed Services Payment Option.

Fiscal Notes

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, during the first five-year period the proposed rule is in effect, there will be a fiscal impact to state government for increases in Medicaid rates paid for therapy services delivered by home health agencies of $19.3 million for state fiscal year (SFY) 2008; $20.3 million for SFY 2009; $21.9 million for SFY 2010; $23.5 million for SFY 2011; and $25.3 million for SFY 2012. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, during the first five-year period the proposed rule is in effect there will be a fiscal impact to state government for Medicaid rates paid for personal care services of $53.6 million for state fiscal year (SFY) 2008; $55.6 million for SFY 2009; $57.0 million for SFY 2010; $58.3 million for SFY 2011; and $59.7 million for SFY 2012. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the proposed amendment. The anticipated public benefit, as a result of enforcing the proposed amendment, will be consistent Medicaid fees for similar therapy services and to provide additional personal care services to the Medicaid population under 21 years of age.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Nancy Kimble, Senior Rate Analyst in the Rate Analysis Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at Nancy.Kimble@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8441. Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment[~~-Comprehensive Care Program~~] (EPSDT[~~-CCP~~]) Services.

The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis and Treatment[~~-Comprehensive Care Program~~] (EPSDT[~~-CCP~~]) program, delivered only to Medicaid clients under age 21, also known as the Texas Health Steps[~~-CCP~~] (THSteps[~~-CCP~~])[~~, only to client under age 21~~]. Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

(1) THSteps[~~-CCP~~] counseling and psychotherapy services are reimbursed to freestanding psychiatric hospitals and facilities in accordance with §355.8063 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services). The reimbursement methodologies for counseling and psychotherapy services provided to all Medicaid clients are located elsewhere in this chapter.

(2) - (4) (No change.)

(5) Physical therapy (PT) services are reimbursed in accordance with the [~~existing~~] Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, §355.8081 of this title (relating to Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, and Psychologists' Services);

(B) HHAs[~~, §355.8021 of this title;~~]. Fees for these services are statewide visit rates determined appropriate by HHSC. The fees are based on a review of Medicaid and Medicare fees for similar services, an analysis of cost reports provided by HHAs, modeling using an analysis of other data available to HHSC such as relevant cost or fee surveys, or a combination thereof;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), §355.8085 of this title;

(D) freestanding rehabilitation hospitals, §355.8063 of this title; and

(E) outpatient hospitals, §355.8061 of this title (relating to Payment for Hospital Services).

(6) Occupational therapy (OT) services are reimbursed in accordance with the [~~existing~~] Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, §355.8081 of this title;

(B) HHAs[~~, §355.8021 of this title;~~]. Fees for these services are statewide visit rates determined appropriate by HHSC. The fees are based on a review of Medicaid and Medicare fees for similar services, an analysis of cost reports provided by HHAs, modeling using an analysis of other data available to HHSC such as relevant cost or fee surveys, or a combination thereof;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), §355.8085 of this title;

(D) freestanding rehabilitation hospitals, §355.8063 of this title; and

(E) outpatient hospitals, §355.8061 of this title.

(7) Speech-language pathology (SLP) services are reimbursed in accordance with the [~~existing~~] Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, §355.8081 of this title;

(B) HHAs[~~, §355.8021 of this title;~~]. Fees for these services are statewide visit rates determined appropriate by HHSC. The fees are based on a review of Medicaid and Medicare fees for similar services, an analysis of cost reports provided by HHAs, modeling using an analysis of other data available to HHSC such as relevant cost or fee surveys, or a combination thereof;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), §355.8085 of this title;

(D) freestanding rehabilitation hospitals, §355.8063 of this title; and

(E) outpatient hospitals, §355.8061 of this title.

(8) - (11) (No change.)

(12) Personal care services (PCS) are reimbursed in accordance with the following Medicaid reimbursement methodologies for the applicable provider type:

(A) School districts delivering PCS under School Health and Related Services (SHARS) are reimbursed in accordance with §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)); and

(B) Providers other than school districts delivering PCS are reimbursed as follows:

(i) PCS and PCS delivered in conjunction with delegated nursing services are reimbursed fees determined by HHSC or its designee. The fees are determined using at least one of the following methods: a review of rates paid to providers delivering similar services; modeling using an analysis of other data available to HHSC; or a combination thereof, as determined appropriate by HHSC.

(ii) PCS delivered through the Consumer Directed Services (CDS) payment option are reimbursed in accordance with §355.114 of this title (relating to Consumer Directed Services Payment Option).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §355.8551

The Texas Health and Human Services Commission (HHSC or Commission) proposes amendments to §355.8551, relating to the Dispensing Fee in the Medicaid Vendor Drug Program.

Background and Justification

The 2008-2009 General Appropriations Act (Article II, Special Provisions Relating to All Health and Human Services Agencies, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007) includes approximately $56.5 million in general revenue for the biennium to increase the Medicaid Vendor Drug Program (VDP) dispensing fee to pharmacies.

Currently, §355.8551 provides for a dispensing expense of $5.27 per prescription. Based on the 2004-2005 General Appropriations Act (Article II, Health and Human Services Commission, H.B. 1, 78th Legislature, Regular Session, 2003), this amount was reduced to $5.14. The 2008-2009 General Appropriations Act includes funding for the restoration of this rate and provides additional funds to increase the dispensing expense to $7.50.

The proposed amendment also updates language to reflect the revised name for the general cost inflation index that the Vendor Drug Program uses. The new name for the index, which is maintained by the U.S. Department of Commerce's Bureau of Economic Analysis, is the Personal Consumption Expenditures (PCE) pricing index rather than the Implicit Price Deflator. The proposed amendment also changes the time frame for inflation increases from "annually" to "on the first day of the biennium" (i.e., every two years). All changes are being made within the available funds appropriated.

Section-by-Section Summary

The proposed amendment to §355.8551(2) increases the Medicaid pharmacy dispensing expense from $5.27 to $7.50 per prescription. The proposed amendments to §355.8551(3) update the inflation pricing index used for the dispensing fee to the Personal Consumption Expenditures (PCE) chain-type price index and change the period for inflation adjustments from "annual" to "on the first day of the biennium."

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, during the first five years the proposed rule is in effect, there will be a fiscal impact to state government of $26.8 million for state fiscal year (SFY) 2008; $28.2 million for SFY 2009; $29.7 million for SFY 2010; $30.9 million for SFY 2011; and $32.2 million for SFY 2012 as a result of the increased rate. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

HHSC has determined that there will not be an effect on small businesses or micro businesses to comply with the proposed amendments, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the proposed rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit, as a result of enforcing the proposed amendment, is pharmacists will receive an increased fee for dispensing prescriptions to Medicaid clients.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by the Government Code, §2001.0225. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under the Government Code, §2007.043.

Public Comment

Written comments on the proposal may be submitted to James Hollinger, Acute Care Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200, Mail Code H-400; by fax to (512) 491-1998; or by e-mail to James.Hollinger@hhsc.state.tx.us within 30 days of the publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8551. Dispensing Fee.

The Texas Health and Human Services Commission (Commission) reimburses contracted Medicaid pharmacy providers according to the dispensing fee formula defined in this section. The dispensing fee is determined by the following formula: Dispensing Fee = (((Estimated Drug Ingredient Cost + Estimated Dispensing Expense) divided by (1 - Inventory Management Factor)) - Estimated Drug Ingredient Cost) + Delivery Fee, where:

(1) The estimated drug ingredient costs are defined in §355.8541 of this title (relating to Legend and Non-legend Medication) and §355.8545 of this title (relating to Texas Maximum Allowable Cost).

(2) The estimated dispensing expense is $7.50 [~~$5.27 for state fiscal year 1997. This will be adjusted annually subject to the availability of funds to account for general inflation~~].

(3) The inflation adjustment will be made, subject to the availability of appropriated funds, on the first day of the biennium [~~state fiscal year~~]. The projected rate of inflation [~~for the upcoming state fiscal year~~] shall be based upon a forecast of the [~~Implicit Price Deflator~~] Personal Consumption Expenditures (PCE) chain-type price index as the general cost inflation index. HHSC uses the lowest feasible PCE forecast consistent with the forecasts of nationally recognized sources available to HHSC at the time proposed reimbursement is prepared for public dissemination and comment [~~produced by a nationally recognized forecasting firm~~].

(4) The inventory management factor is 2.0%.

(5) The total dispensing fee shall not exceed $200 per prescription.

(6) Add-on amounts

(A) A delivery incentive shall be paid, subject to the availability of appropriated funds; to approved providers who certify in a form prescribed by the Commission that the delivery services meet minimum conditions for payment of the incentive. These conditions include: making deliveries to individuals rather than just to institutions, such as nursing homes; offering no-charge prescription delivery to all Medicaid recipients requesting delivery in the same manner as to the general public; and, publicly displaying the availability of prescription delivery services at no charge. The delivery incentive is $.15 per prescription and is to be paid on all Medicaid prescriptions filled for legend drugs. This delivery incentive is not to be paid for over-the-counter drugs, which are prescribed as a benefit of this program.

(B) A generic drug dispensing incentive of $0.50 per prescription will be paid on all Medicaid prescriptions filled for preferred generic drugs for which a manufacturer has agreed to pay a supplemental rebate. Preferred generic drugs are subject to the Preferred Drug List (PDL) requirements, as described in §354.1924 of this title.

(7) Notwithstanding other provisions of this section, the Commission may adjust the dispensing fee to address budgetary constraints in accordance with the provisions of 1 TAC §355.201.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
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DIVISION 31. AMBULANCE SERVICES

1 TAC §355.8600

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8600, concerning Reimbursement for Ambulance Services. The proposed amendment changes the reimbursement methodology for ambulance services from one based on a reasonable charge methodology for ground ambulance services to one based on statewide, flat fees for all ambulance services.

Background and Justification

The 2008-2009 General Appropriations Act (Article II, Special Provisions Relating to All Health and Human Services Agencies, Section 57, House Bill 1, 80th Legislature, Regular Session, 2007) includes about $31.3 million in general revenue for the biennium to increase Medicaid rates for ambulance services. These additional funds will enable Medicaid reimbursement for ambulance services to move toward the Medicare ambulance fee schedule.

Current Medicaid reimbursement methodology rules for ambulance services at 1 TAC §355.8600 are based on a reasonable charge methodology for ground ambulance providers. For providers in existence in 1991, a reasonable charge for a specific service is the lowest of: (1) the ground ambulance provider's 1991 customary charge for that service; (2) the 1992 prevailing charges made for similar services in the geographic locality; or (3) the actual charge of the eligible provider. Fees for ground ambulance providers that came into existence after 1991 are based on the lesser of: (1) the provider's actual charges; (2) the 75th percentile of the applicable prevailing charges profile for the provider's locality; or (3) the 50th percentile of the applicable prevailing charges profile. Fees for air ambulance providers (i.e., rotary or fixed wing) are based on the lesser of

the provider's actual charges or the published fee schedule; however, the current reimbursement methodology rule does not include air ambulance providers.

Medicare has been phasing in a national fee schedule for ground and air ambulance services since April 1, 2002. Effective calendar year 2006, Medicare payments for ambulance services are based entirely on the Medicare ambulance fee schedule.

The proposed rule specifies that both ground and air ambulance services are reimbursed based on the lesser of the provider's billed charges or fees established by HHSC. The proposed rule further specifies that the fees established by HHSC are based on a review of the Medicare fee schedule and/or an analysis of other data available to HHSC, such as relevant fee surveys, with any adjustments made within available funding.

Section-by-Section Summary

Proposed 1 TAC §355.8600 is being revised so that all ambulance providers will be reimbursed the lesser of their billed charges for a specific ambulance service or the fee established by HHSC. The established fee will be based on a review of the Medicare ambulance fee schedule or other data available to HHSC, such as relevant fee surveys, and with any adjustments being made within available funds.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, during the first five-year period the proposed rule is in effect, there will be a fiscal impact to state government of $15.2 million for state fiscal year (SFY) 2008; $16.0 million for SFY 2009; $17.3 million for SFY 2010; $18.6 million for SFY 2011; and $20.0 million for SFY 2012 as a result of increased rates to ambulance providers. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the proposed rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the proposed amendment. The anticipated public benefit, as a result of enforcing the amendment, will be to provide for a consistent rate methodology for all providers of ambulance services regardless of the year the provider came into existence, provide a method to determine a rate for both ground and air providers, and create a flat fee for providers that is known in advance of the service. It is anticipated that these proposed changes will encourage the delivery of ambulance services to the Medicaid population.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Nancy Kimble, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at Nancy.Kimble@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8600. Reimbursement for Ambulance Services.

Ground and air ambulance [~~Ambulance~~] services are [~~shall be~~] reimbursed based on the lesser of the provider's billed charges or fees established by the Texas Health and Human Services Commission (HHSC). Fees established by HHSC are based on a review of the Medicare fee schedule and/or an analysis of other data available to HHSC such as relevant fee surveys, with any adjustments made within available funding. [~~in accordance with a reasonable charge methodology. The Texas Health and Human Services Commission (HHSC) or its designee shall define and determine reasonable charges and payments as follows, with all determinations and adjustments to those determinations made within available funding.~~]

[~~(1) A reasonable charge for a specific service shall be the lowest of:~~]

[~~(A) the provider's customary charge for that service;~~]

[~~(B) the prevailing charges made for similar services in the geographic locality; or~~]

[~~(C) the actual charge of the eligible provider.~~]

[~~(2) HHSC or its designee shall use a statistical base for making reasonable charge determinations. The statistical base is comprised of individual charges gathered from available sources, including Medicare (Title XVIII) and Medicaid (Title XIX).~~]

[~~(3) Determination of reasonable charges, as set forth in this section and established by HHSC or its designee, shall be made in accordance with applicable federal requirements. Payments for services provided must not exceed the Medicare fee schedule.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 357. HEARINGS

The Texas Health and Human Services Commission (HHSC) proposes to amend §357.305, concerning Administrative Review of Fair Hearing Decisions, and to promulgate new Subchapter R, concerning Judicial and Administrative Review of Hearings, §§357.701 - 357.703.

Background and Justification

The Health and Human Services Commission (HHSC) is required to have procedural rules that direct the conduct of administrative hearings. H.B. 75, 80th Legislature, Regular Session, 2007, amended Texas Government Code Chapter 531 to require state court judicial review of HHSC decisions relating to benefit programs under Texas Human Resources Code Chapters 32 (Medicaid) and 33 (Nutritional Assistance Programs). H.B. 75 also requires HHSC to amend the current administrative review process to require an applicant for or recipient of benefits under these programs to request an administrative review of the decision by an agency attorney as a prerequisite for judicial review.

The rule proposed to amend, §357.305, sets out the provisions of the former administrative review process which will be limited to decisions involving Chapter 31, Human Resources Code. The proposed new Subchapter R includes the rules necessary to implement these new statutory requirements, which are codified as Texas Government Code §531.019.

Section by Section Summary

Section 357.305, which describes the process and timeframes for requesting a review of agency fair hearing decisions by an agency attorney, is amended to describe the administrative review process for decisions involving Chapter 31, Human Resources Code.

New §357.701 establishes the purpose and applicability of the proposed subchapter, which applies to the administrative and judicial review of HHSC hearing decisions relating to the benefit programs under Chapters 32 and 33, Human Resources Code.

New §357.702 defines the terms used in the new subchapter.

New §357.703 sets out the process and timeframes for requesting and obtaining administrative review and judicial review of the applicable hearing decisions.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five years this amendment and proposed new subchapter are in effect, the cost to HHSC of the implementation and administration of the new administrative review process and judicial review will amount to approximately $468,026 in general revenue. There will be no cost to local governments.

Small and Micro-business Impact

Mr. Suehs also has determined that there will be no adverse economic effect on small or micro businesses as a result of enforcing or administering this amendment and the proposed new subchapter. The proposal increases flexibility for appellants and does not add any new requirements for businesses. There is no anticipated economic cost to persons who are required to comply with this amendment and the proposed new subchapter. There is no anticipated effect on local employment in geographic areas affected by this amendment and the proposed new subchapter.

Public Benefit

Paul Leche, Special Counsel for Appeals, has determined that, for each year of the first five years this amendment and the proposed new subchapter are in effect, the public will benefit as a result of these changes. The anticipated public benefit will be that all parties and their attorneys, as well as all other members of the public involved in the HHSC hearing process, will have a clear understanding of the right to an administrative review by the agency and, after the final agency determination, the right to have the decision in appropriate cases reviewed by a district court in Travis County.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a section of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Statement

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Questions about the content of this proposal may be directed to Paul Leche, Special Counsel for Appeals, by telephone at (512) 487-3315. Written comments on the proposal may be submitted to Paul Leche, Texas Health and Human Services Commission, HHSC Appeals Division, P.O. Box 149030 (MC W-613), Austin, Texas 78714-9030, or by e-mail to paul.leche@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER D. FAIR HEARINGS

1 TAC §357.305

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.0055(e), which provides authority for the

commissioner to adopt rules and policies for the operation and provision of health and human services by the health and human services agencies.

Sections Affected

The amendment affects Texas Human Resources Code Chapters 32 and 33, Texas Government Code Chapter 531, and Texas Administrative Code Title 1, Part 15, Chapter 357.

§357.305. Administrative Review of Fair Hearing Decisions.

(a) Unless otherwise described in these rules, the hearing officer's decision is the agency's final administrative decision. The agency is, however, aware of the need to monitor hearing decisions for procedural and programmatic accuracy and provides a process for administrative review of decisions that are challenged by appellants.

(b) Request for administrative review of public assistance programs of Chapter 31, Human Resources Code must be postmarked within 30 days of date of the decision and should be addressed to the Hearings Administrator.

(c) Requests for administrative review will be processed as outlined in §357.703 (a) and (b) of this title (relating to Process and Timeframes).

~~[(a) The hearing officer's decision is the DHS' final administrative decision. DHS is, however, aware of the need to monitor hearing decisions for procedural and programmatic accuracy and provides a process for administrative review of decisions that are challenged by appellants.]~~

~~[(b) Request for administrative review must be postmarked within 30 days of date of the decision and should be addressed to the appropriate regional attorney.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER R. JUDICIAL AND ADMINISTRATIVE REVIEW OF HEARINGS

1 TAC §§357.701 - 357.703

Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.0055(e), which provides authority for the commissioner to adopt rules and policies for the operation and provision of health and human services by the health and human services agencies.

Sections Affected

The new rules affect Texas Human Resources Code Chapters 32 and 33, Texas Government Code Chapter 531, and Texas Administrative Code Title 1, Part 15, Chapter 357.

§357.701. Purpose and Application.

The purpose of this subchapter is to address the process for requesting administrative and judicial review of certain hearings. This subchapter applies to those hearings provided in this chapter that are related to benefits provided under the public assistance programs of Chapters 32 (Medicaid) and 33, (Nutrition Assistance Programs) Human Resources Code.

§357.702. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Review--A desk review performed by an HHS system attorney of a hearing decision related to benefits provided under the public assistance programs of Chapters 32 and 33, Human Resources Code.

(2) Appellant--An applicant or client who requests a hearing or requests an administrative review of the hearing decision either personally or through a representative.

(3) Commission--The Texas Health and Human Services Commission.

(4) Date of Notice--The date on the written notice that informs the client of the agency action or decision.

(5) Day--A calendar day, unless otherwise specified.

(6) Health and Human Services (HHS) System Agencies--The following five state agencies that are responsible for health and human services functions:

(A) Texas Health and Human Services Commission (HHSC);

(B) Department of Aging and Disability Services (DADS);

(C) Department of Assistive and Rehabilitative Services (DARS);

(D) Department of Family and Protective Services (DFPS); and

(E) Department of State Health Services (DSHS).

(7) Hearings Administrator--The administrator for fair and fraud hearings in the HHSC Appeals Division.

(8) Representative--Any person who assists the appellant in presenting the appellant's case. A legal counsel, relative, friend, or other spokesperson designated by the appellant may serve as a representative.

§357.703. Process and Timeframes.

(a) The hearing officer makes the final administrative decision in a hearing for the HHS system agency and its designees, unless, in those instances related to benefits provided under the public assistance programs of Chapters 32 and 33, Human Resources Code, the appellant or the appellant's representative files a request for an administrative review of the hearing decision.

(b) The following provisions establish the process and timelines for an administrative review under this subchapter.

(1) An appellant or the appellant's representative may make a timely request for an administrative review of a hearing officer's decision.

(2) To be timely, a request for an administrative review of the hearing officer's decision must be postmarked not later than the 30th

day after the date of the notice of the decision and must be addressed to the Hearings Administrator. A request for administrative review will be considered timely if filed after 30 days, where appellant demonstrates good cause.

(3) Within 10 days of receipt of the request for administrative review, the Commission designates a HHS system attorney to handle the administrative review of the hearing decision on behalf of the HHS system agency. The assigned attorney reviews the hearing decision for errors of law and errors of fact using the "preponderance of evidence" standard. This standard means that the evidence as a whole shows that the fact sought to be proved is more probable than not.

(4) The attorney completes the administrative review and notifies the appellant in writing of the results not later than the 15th business day after the date the attorney receives the request for review.

(5) When an administrative review is conducted, the attorney makes the final decision for the HHS system agency and its designees.

(c) If the attorney's final decision in the administrative review is adverse to the appellant, judicial review may be obtained by filing for review with a district court in Travis County not later than the 30th day after the date of the notice of the final decision as provided under Government Code Chapter 2001.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200702625

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 5, 2007

For further information, please call: (512) 424-6900

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CHAPTER 358. MEDICAID ELIGIBILITY
SUBCHAPTER E. INCOME

1 TAC §358.465

Pursuant to Senate Bill (S.B.) 22, 80th Legislature, Regular Session, 2007, amending Subchapter B, Chapter 32 of the Human Resources Code, the Texas Health and Human Services Commission (HHSC) proposes to amend the Texas Administrative Code (TAC), Title 1, Part 15, Subchapter E, Chapter 358, Medicaid Eligibility, §358.465 General Principles Concerning Income, paragraph (3). The purpose of this amendment is to allow $20 exclusion of unearned or earned income from an individual's monthly income in determining an individual's eligibility for community attendant services.

Background and Justification

The special income limit of 300% percent of the Supplemental Security Income (SSI) Federal Benefit Rate (FBR) is used for determining eligibility for Community Attendant (CA) services. The special income limit is $1,869 per month for 2007.

Under 42 CFR 435.1005 Federal Financial Participation (FFP) is available for recipients whose eligibility is based on the special income limit provided the individual's income, before deductions, does not exceed 300% percent of the SSI FBR.

The 80th Legislature enacted S.B. 22 to exclude a $20 of unearned or earned income from an individual's gross monthly income in determining an individual's eligibility for community attendant services.

Federal approval to allow the $20 disregard is required to implement this provision.

The amendment to the TAC is necessary to comply with S.B. 22.

Rule Change Summary

This rule incorporates the statutory change to allow a $20 exclusion of unearned or earned income from an individual's gross monthly income in determining an individual's eligibility for community attendant services. The rule also changes language of "Type Program 14" to "special income limit programs."

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five years these proposed rules are in effect, the cost to HHSC of the implementation will amount to approximately $311,212 in general revenue. There will be no cost to local governments.

Small and Micro-business Impact Analysis Mr. Suehs also has determined that there will be no adverse economic effect on small or micro businesses as a result of this amendment. The proposal does not add any new requirements for businesses. There is no anticipated economic cost to persons who are required to comply with this change. There is no anticipated effect on local employment in geographic areas affected by this change.

Anne Heiligenstein, Deputy Executive Commissioner for Social Services, has determined that for each of the first five years the proposed amendment is in effect, the public will benefit from the adoption of the rule because the $20 disregard will allow individuals with income slightly higher than the 300% of the SSI FBR to be eligible for CA.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Dee Church at Mail Code 2090, P.O. Box 12668, Austin, TX 78711-2668, by fax to (512) 206-5211, or by e-mail to dee.church@hhsc.state.tx.us within 30 days of publication of the proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.061, regarding the Community Attendant Services Program; and Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§358.465. Income Exclusions.

(a) General exclusion. For each month, the first $20 of unearned or earned income is excluded. This exclusion is applied first to unearned income, then to earned income if the unearned income is less than $20. If no unearned income exists, the entire $20 exclusion is applied to the earned income. Exceptions are as follows.

(1) Although the exclusion does not apply to VA pensions and parents' DIC, it does apply to VA compensation and insurance. If, however, a client receives income from a VA pension and another source, he retains the general exclusion.

(2) In the case of an eligible couple, only one exclusion is applied to the couple's combined earned income.

(3) The $20 general exclusion does not apply to those cases for which eligibility is determined based on the special income limit up to 300% of the SSI federal benefit rate, unless the case is a Community Attendant Services case [~~Type Program 14 and community attendant services cases~~].

(b) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Service Commission (HHSC) proposes to amend Chapter 370, State Children's Health Insurance program. HHSC proposes to amend the following rules: §370.4, Definitions; §370.20, Application Availability and File Date; §370.22, Completion of Telephone Applications; §370.43, Citizenship and Residency; §370.44, Income and Assets; §370.46, Waiting Period; §370.51, Deadline and Method for Requesting Review; §370.52, Disposition of a Request for Review; §370.303, Completion of Enrollment; §370.307, Continuous Enrollment Period, §370.325, Cost-Sharing Cap; and §370.401, Perinates.

HHSC proposes to repeal §370.23, Application Contents. HHSC also proposes to repeal §370.53, Reconsideration by HHSC. Section 370.53 is being repealed because HHSC assumed request for review responsibility effective May 1, 2007.

HHSC proposes to add new §370.60, Renewals, which includes information on when the renewal packet and reminder notices are sent. HHSC is also adding new §370.70, Income Eligibility Check during the 6th Month of Coverage, and new §370.71, Review and Reconsideration of Disenrollment Determination, which includes information on the process for performing an income check for households with income above 185% Federal Poverty Limit (FPL) and disenrollment of households subject to the income check.

HHSC proposes to amend the title of Subchapter B to align the title of the chapter to improve the description of the information contained with the subchapter. The new name is "Application Screening, Referral, Processing Renewal, and Disenrollment".

Background and Justification

House Bill 109, 80th Legislature, Regular Session, 2007, requires HHSC to make changes to eligibility and cost sharing policy and procedures. The changes include allowing a child care deduction, modifying the 90 day wait policy, extending the enrollment period, updating the cost-sharing cap, increasing household asset limit and vehicle excess value exclusion amounts, and conducting an income eligibility check for households with income above 185% Federal Poverty Limit (FPL).

In addition, HHSC is aligning rules due to policy clarifications and process improvement changes. These changes include clarifying file date policy, allowing clients to select a health plan via telephone, defaulting clients into a health plan who fail to choose one, clarifying the definition of countable income, clarifying that the value of unlicensed or inoperable vehicles must be counted in the eligibility determination, and deleting references to HHSC's designee and references to reconsideration by HHSC due to a shift in the request for review functions from the vendor to state staff.

Section-by-Section Summary

Amended §370.4 is revised to: update the definition of countable income to exclude the income of children or siblings under age 18 who attend school and delete information related to regular or predictable income; add a definition of net budget group income; and renumber the definitions as appropriate to accommodate the new definition.

Subchapter B title is revised to more accurately describe the contents of the subchapter.

Section 370.20 is revised to clarify that the file date for applications received via telephone or internet is the date a name and address is provided as long as the signature is received by the final due date.

Section 370.22 is revised to delete a reference to an obsolete section.

Section 370.23 is being deleted because the rule is being repealed.

Section 370.43 is revised to simplify language. References to gross income are changed to net income in §370.44. In addition, the asset limit is changed, vehicle exclusion amounts are updated, and language is clarified to match existing policy.

Section 370.46 is revised to update the 90-day waiting period criteria to apply a wait only to applicants who were covered by a health benefits plan during the 90 days prior to application.

Sections 370.51 and 370.52 are revised to remove the word designee as HHSC now handles the request for review functions

rather than the vendor and remove references to HHSC timeframes. Section 370.53 is being deleted due to the shift in responsibility for request for review functions from the vendor to state staff thus making the reconsideration by HHSC obsolete.

Section 370.60 is added to describe the renewal process.

Section 370.70 is added to provide information related to performing an income check for households with income above 185% FPL in the 6th month of coverage. Section 370.71 is added to provide information related to disenrollment of households and HHSC requirements during a request for review.

Section 370.303 is revised to add telephone as a method to select a health plan or Primary Care Provider (PCP) and defaults members into a health plan if they fail to choose a health plan. Section 370.307 is revised to update the enrollment period from six to twelve months.

Section 370.325 is amended to adjust the cost-sharing cap to a twelve month amount based on the household's net income instead of gross income.

Section 370.401 is amended to exempt Perinates from the six month income verification requirement.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rules are in effect there will be a fiscal impact of $247.3 million of additional cost to state government and provides for $14.1 million in additional revenue from client cost sharing. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

Joanne Molina, interim Associate Commissioner for Family Services, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the sections. The anticipated public benefit, as a result of enforcing the sections, will be the increased access to medical assistance to a population of children under age 19 who are not currently eligible to receive Medicaid benefits due to income or asset limits.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Ramona McKissic at P.O. Box 12668, Austin, Texas 78711-2668, by fax to (512) 206-4536, or by e-mail Ramona.McKissic@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for July 19, 2007 from 9 a.m. to 10 a.m. central time in the Winter Building Public Hearing room located at 701 West 51st St., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Reymundo Aguilar at (512) 206-5252.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §370.4

Statutory Authority (CHIP)

The amendments are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendments affect the Texas Health and Safety Code, Chapter 62, and the Texas Administrative Code, Chapter 370. No other statutes, articles, or codes are affected by these proposed amendments.

§370.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (10) (No change.)

(11) Countable Income--For the month of receipt, any type of payment that is a regular and predictable gain or a benefit to a Budget Group that is not specifically exempted. In determining countable income, do not include income [~~Regular and predictable income is income received in one month that is either likely to be received in the next month and was received on a regular and predictable basis in past months. It does not include income that was received on an irregular and unpredictable basis in past months, or is~~] received by the child or sibling member of the Budget Group who is under age 18 and enrolled in school [~~fulltime, or in school part-time and working less than 30 hours per week~~].

(12) - (21) (No change.)

(22) Net Budget Group Income--Gross Monthly Countable Income minus any allowable deductions.

(23) [~~(22)~~] Qualified Alien--An alien who, at the time of application, satisfies the criteria established under 8 U.S.C. §1641(b).

(24) [~~(23)~~] SSI--Supplemental Security Income.

(25) [~~(24)~~] State Fiscal Year--The 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL, PROCESSING, RENEWAL, AND DISENROLLMENT

DIVISION 1. APPLICATION PROCESSES

1 TAC §370.20, §370.22

Statutory Authority

The amendments are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendments affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.20. Application Availability and File Date.

(a) (No change.)

(b) Establishing a file date

(1) (No change.)

(2) For applications received via telephone or internet, the file date is [~~established in one of the following two ways:~~]

[~~(A)~~] the [~~The~~] date name and address [~~all information required under §370.23 of this title (relating to Application Contents)~~] is provided [~~except for a written signature~~], as long as the applicant provides a written signature by the final due date [~~39th day~~].

[~~(B) The date the applicant provides, at a minimum, the applicant's name and address, as long as a written signature is provided within 10 calendar days of the date the name and address is provided. HHSC's designee sends the applicant an application requesting a signature, enclosing a letter that explains the file date policy. If it is not returned by the 10th day, the vendor may deny eligibility on the basis that no valid application has been received. If a signature is not provided until after the 10-day deadline, the file date is the date the signature is received.~~]

§370.22. Completion of Telephone Applications.

If an Applicant telephones to apply, the State or its designee completes as much of the application as possible over the telephone, prints it, and mails it to the Applicant. The Applicant is responsible for submitting to HHSC or its designee all information required [~~under §370.23 of this chapter (relating to Application Contents)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §§370.43, 370.44, 370.46

Statutory Authority

The amendments are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendments affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.43. Citizenship and Residency.

(a) - (d) (No change.)

(e) The Applicant states the child's citizenship, immigration status and Texas residency on the Application. The [~~If the applicant states the child is not a United States citizen, the~~] applicant must provide documentary evidence of the child's citizenship or Qualified Alien status that is satisfactory to HHSC [~~a Bureau of Citizenship and Immigration Services (formerly known as the U.S. Immigration and Naturalization Service) approved document that demonstrates that the child is a Qualified Alien~~].

§370.44. Income and Assets.

(a) - (c) (No change.)

(d) Net [~~Gross~~] Income Test.

(1) A child is income eligible if the net [~~gross~~] budget group income, after rounding down cents, is equal to or less than the 200% of FPL for the Budget Group's size. All Budget Groups must pass the net [~~gross~~] income test.

(2) Budget Groups with a net [~~gross~~] monthly income greater than 150% of FPL will be subject to an assets test in accordance with subsection (h) of this section.

(e) - (g) (No change.)

(h) Assets test.

(1) In order to be eligible for CHIP, a Budget Group with a net [~~gross~~] monthly income greater than 150% FPL must not own more than $10,000 [~~own $5,000.00 or less~~] in Countable Liquid Assets and Excess Vehicle Value combined.

(2) Determination of Excess Vehicle Value.

(A) Vehicles whose value must be considered include: registered or unregistered [~~any operable, licensed~~] automobile, truck,

motorcycle, SUV, van, motor home or boat that is owned by a member of the Budget Group. Vehicles whose value is not considered in the determination of Excess Vehicle Value include vehicles that are:

(i) - (iii) (No change.)

(B) Vehicle values will be determined by HHSC based on [~~taken from~~] the *Hearst Corporation National Auto Research Division Black Book*, lowest wholesale price in the average quality range listed for the make, model, and year of the vehicle. If the *Black Book* has no listing for the vehicle, HHSC will utilize the low retail value for the vehicle from the National Automobile Dealers Association (N.A.D.A) Used Care Guide. If the vehicle is not listed in either publication, HHSC may accept the client's estimate of value. [~~The vehicle value taken from the *Black Book* will be the lowest wholesale price in the average quality range listed for the make, model and year of the vehicle. If the *Black Book* has no listing for the vehicle, the value is self-declared by the applicant. No deductions are allowed for amounts owed on a vehicle.~~]

(C) (No change.)

(3) Exempt vehicles.

(A) (No change.)

(B) A Budget Group may claim an exemption under subparagraph (A)(i) - (iv) of this paragraph for only one vehicle worth $18,000 [~~$15,000.00~~] or more.

(C) A Budget Group may claim an exemption under subparagraph (A) of this paragraph for all vehicles worth less than $18,000 [~~$15,000.00~~].

(D) (No change.)

(4) Other exemptions for vehicles. If a Budget Group has no fully exempt vehicle:

(A) the first $18,000 [~~$15,000.00~~] of the value of the Budget Group's highest valued countable vehicle is exempt. Any value over $18,000 [~~$15,000.00~~] is considered Excess Vehicle Value and is counted towards the Budget Group's $10,000 [~~$5,000.00~~] assets limit; and

(B) the first $7,500 [~~$4,650.00~~] of the value of each additional vehicle owned by the Budget Group is exempt. The value in excess of $7,500 [~~$4,650.00~~] is considered Excess Vehicle Value and is counted towards the Budget Group's $10,000 [~~$5,000.00~~] assets limit.

§370.46. Waiting Period.

(a) The waiting period is a delay in the start of health care coverage that: [~~and~~]

(1) applies to a child who was covered by a health benefits plan at any time during the 90 days before the date of application for coverage; and [~~determined to be CHIP eligible, and~~]

(2) extends for a period of 90-days after

[~~(1)~~] the last date on which the applicant was covered under a health benefits plan.[~~first day of the month in which the child is determined eligible for CHIP, if the day of eligibility is on or before the 15th day of the month; or~~]

[~~(2) the first day of the month after which the child is determined eligible for CHIP, if the day of eligibility is after the 15th day of the month.~~]

(b) (No change.)

(c) The 90-day waiting period specified in subsection (a) of this section does not apply to a child under the following circumstances:

(1) - (2) (No change.)

(3) The child's health insurance coverage costs more than 10 percent of the Budget Group's net [~~gross~~] monthly income;

(4) - (5) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702600
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-6900

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DIVISION 5. REVIEW AND RECONSIDERATION OF ELIGIBILITY DENIALS AND TEMPORARY ENROLLMENT

1 TAC §370.51, §370.52

Statutory Authority

The amendments are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendments affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.51. Deadline and Method for Requesting Review.

An applicant may request [~~a~~] review of a determination of denial of eligibility or of HHSC's failure to make a timely determination by contacting HHSC [~~HHSC's designee~~] in writing within 30 working days from the notice of the action.

§370.52. Disposition of a Request for Review.

(a) HHSC [~~HHSC's designee~~] must complete its review within established timeframes upon [~~10 working days of~~] receipt of the request for review.

(b) HHSC [~~HHSC's designee~~] must notify the requester in writing of the results of its review [~~not later than the 10th day following receipt of the request~~]. The written notification must:

(1) - (2) (No change.)

(3) explain any applicable rights to reconsideration or review of the determination or state that the determination is final.

[~~(3) if the action is upheld, inform the requester of the right to request reconsideration within 15 working days and provide instructions on how to request reconsideration by HHSC.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 6. RENEWAL PROCESS

1 TAC §370.60

Statutory Authority

The new rule is proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The new rule affects the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed new rule.

§370.60. Renewal.

(a) During the 9th month for a twelve-month coverage period, a renewal packet is mailed to families enrolled in CHIP.

(b) Households who fail to return the renewal information are mailed a reminder notice.

(c) If the household does not respond to the initial reminder notice, a second reminder notice is sent to the household.

(d) Coverage will not be renewed if the household fails to return all required renewal information by the deadline set by HHSC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 7. DISENROLLMENT

1 TAC §370.70, §370.71

Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed new rules affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed new rules.

§370.70. Income Eligibility Check in 6th Month of Coverage.

(a) CHIP households enrolled in a 12-month coverage period with income levels above 185% FPL will have the household income reviewed during the sixth month of coverage. The household remains eligible for coverage if the household income remains within income eligibility limits described in §370.44 of this title (relating to Income and Assets).

(b) CHIP households described in subsection (a) of this section will be disenrolled if:

(1) the household income is determined to exceed the income eligibility limits described in §370.44 of this title;

(2) the household fails to provide requested income information within the timeframes set by HHSC; or

(3) the household otherwise fails to cooperate with HHSC in the review process.

(c) HHSC will not disenroll members from the program pursuant to this provision, until:

(1) HHSC has provided the family an opportunity to demonstrate that the family's income is within the income eligibility limits prescribed in this chapter;

(2) the family fails to demonstrate such eligibility within the timeframes set by HHSC; and.

(3) HHSC has provided the family 30 days notice prior to disenrollment.

§370.71. Review and Reconsideration of Disenrollment Determination.

(a) A member may request a review of a suspension or termination of enrollment by contacting HHSC in writing within 30 working days from the notice of the action, or within 15 working days from the notice of the action if the member is requesting continuation of enrollment pending the review decision.

(b) Following receipt of the request for review, HHSC will complete its review within the timeframes required by federal regulation.

(c) HHSC will notify the requester in writing of the results of its review. The written notification will:

(1) explain the reason for the action;

(2) inform the requestor whether the action was reversed; and

(3) explain any applicable rights to reconsideration or review of the determination or state that the determination is final.

(d) A suspension or termination of enrollment is not subject to review if the sole basis for the decision is a provision in the State plan or in Federal or State law that affects all enrollees or a group of enrollees without regard to their individual circumstances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200702604

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-6900

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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL AND PROCESSING
DIVISION 1. APPLICATION PROCESSES

1 TAC §370.23

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed repeal affects the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed repeal.

§370.23. Application Contents.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702599
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 5. REVIEW AND RECONSIDERATION OF ELIGIBILITY DENIALS AND TEMPORARY ENROLLMENT

1 TAC §370.53

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed repeal affects the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed repeal.

§370.53. Reconsideration by HHSC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER C. ENROLLMENT, DISENROLLMENT, AND RENEWAL OF MEMBERSHIP
DIVISION 1. ENROLLMENT

1 TAC §370.303, §370.307

Statutory Authority

The amendments are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendments affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.303. Completion of Enrollment.

(a) - (b) (No change.)

(c) An Applicant may select a PCP or Health Plan by mail, telephone, or facsimile [~~return the enrollment form either by mail, with the enrollment packet, or by facsimile~~].

(d) (No change.)

(e) Members who fail to select a managed care plan or PCP during the period established by the commission will have a managed care plan selected for them by HHSC or its designee using criteria determined by HHSC. HHSC shall establish a default methodology [~~Enrollment for a particular child is closed 90 calendar days after that child is determined eligible for CHIP if the Applicant has not completed enrollment by that time. An Applicant who fails to complete enrollment must initiate a new Application for health care coverage~~].

§370.307. Continuous Enrollment Period.

(a) CHIP enrollment always begins on the first calendar day of the month and continues for a period up to 12 [~~6~~] consecutive months.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702605
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 2. COST-SHARING REQUIREMENTS

1 TAC §370.325

Statutory Authority

The amendments are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendments affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.325. Cost-Sharing Cap.

(a) (No change.)

(b) A Budget Group with gross income at or below 150% of FPL has a cost-sharing cap during the 12 [~~6~~]-month coverage period of 1.25% of its annual gross income.

(c) A Budget Group with gross income greater than 150% of FPL has a cost-sharing cap during the 12 [~~6~~]-month coverage period equal to 2.5% of its annual gross income.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702606
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-6900

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SUBCHAPTER D. ELIGIBILITY FOR UNBORN CHILDREN

1 TAC §370.401

Statutory Authority

The amendment is proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendment affects the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed amendment.

§370.401. Perinates.

(a) (No change.)

(b) A perinate who is CHIP eligible under subsection (a) of this section is:

(1) - (4) (No change.)

(5) exempt from the requirements in §370.70 of this title (relating to Income Eligibility Check in 6th Month of Coverage).

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 10. SEED CERTIFICATION STANDARDS

SUBCHAPTER A. GENERAL REQUIREMENTS

4 TAC §10.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) and the State Seed and Plant (the Board) propose the repeal of §10.11 concerning bulk sales. The repeal is proposed in order to rewrite and update this entire section. Proposed new §10.11 is being filed in a separate submission. The department is the certifying agency in the administration of the Seed and Plant Certification Act and is charged with administering and enforcing the standards adopted by the State Seed and Plant Board.

Mr. Price, Regulatory Branch Chief for Regulatory Programs, has determined that, for each year of the first five-year period the

proposed repeal is in effect, there will be no fiscal implications for state or local government as result of enforcing or administering the proposed repeal.

Mr. Price also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to eliminate an outdated rule. There will be no effect on microbusinesses, small or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeal, as proposed.

Comments on the proposal may be submitted to Ed Price, Regulatory Branch Chief for Regulatory Programs, at the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §62.004, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest and the Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules for administration of the code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.11. Bulk Sales.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702640
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 463-4075

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4 TAC §10.11

The Texas Department of Agriculture (the department) and the State Seed and Plant Board (the Board) propose new §10.11, concerning additional requirements for bulk seed sales. The new section is proposed to update the sale of bulk seed for certification. Proposed new §10.11 clarifies the standards for genetic seed certification. The department is the certifying agency in the administration of the Seed and Plant Certification Act and is charged with administering and enforcing the standards adopted by the State Seed and Plant Board.

Ed Price, Regulatory Branch Chief for Regulatory Programs, has determined that, for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as result of enforcing or administering the section. All fees imposed under this section will remain at their current levels.

Mr. Price also has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be enhanced quality of genetically certified planting seed. There will be no effect on microbusinesses or small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ed Price, Regulatory Branch Chief for Regulatory Programs, at the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest and the Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules for administration of the code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.11. Bulk Sales.

(a) Requirements for sale. The Foundation class of seed may not be sold in bulk. The Registered class of only small grains and rice and the Certified class of any crop kind may be sold in bulk provided the identity of the seed is carefully maintained and the seed is handled in a manner which prevents a mixture. All field and seed standards other than even weight bagging must be met prior to date of sale.

(b) Seller's responsibility. It is the seller's responsibility to:

(1) handle seed in a manner to prevent mixtures and contamination;

(2) supply seed that is representative of the seed tested and approved for certification;

(3) insure that all bins, augers, conveyors, and other equipment are adequately cleaned before handling certified seed;

(4) determine that the vehicle receiving bulk certified seed is clean;

(5) keep a sample of each load of bulk certified seed sold; and

(6) not accept any returned seed.

(c) Maintaining purity of seed. It is the buyer's responsibility to maintain purity of the seed after it has been loaded into the buyer's vehicle. Any unplanted seed cannot be returned to seller.

(d) Selling seed of the Certified class in bulk. A maximum of two sales and two physical seed transfers are allowed. Delivery may be made by the certified seed grower or a retail seed facility, licensed under §9.2 of this title (relating to Agricultural Seed), directly to the consumer. Applications must be made on forms obtained from the department.

(1) The certified seed grower shall:

(A) submit a completed application and copy of the "Report of Seed Analysis" from an approved laboratory to the department;

(B) provide a completed and signed Bulk Sales Certificate, on a form approved by the department, to the buyer at delivery;

(C) submit a copy of the Bulk Sales Certificate and a one-pound sample of each transaction to the Seed Quality Program in Giddings within 30 days of each transaction along with the following information:

(i) weight of seed;

(ii) date of transaction;

(iii) buyer's name and address; and

(iv) delivery point;

(D) pay the necessary Bulk Sales Certificate fee ($.10 per one hundred pounds, or fraction of one hundred pounds of seed); and

(E) if delivery is made directly to the consumer, pay the necessary Agricultural Seed Inspection Fee ($.07 per one hundred pounds, or fraction of one hundred pounds of seed, if on the reporting system of $.07 per one hundred pounds, or fraction of one hundred pounds of seed, if using seed feed labels);

(F) maintain the following records:

(i) the amount of certified seed sold as bulk seed;

(ii) copies of the Bulk Sales Certificate;

(iii) a current inventory of seed of each variety available for sale.

(2) The retail seed facility shall:

(A) provide the consumer a completed Supplemental Bulk Certificate, on a form approved by the department, upon delivery;

(B) provide the consumer with necessary label(s) printed with all of the analysis information required under VTCA, Agriculture Code, §61.004, (relating to labeling of Agricultural Seed);

(C) submit a copy of the completed Supplemental Bulk Certificate to the Seed Quality Program in Giddings within 30 days of each transaction; and

(D) maintain the following records:

(i) the amount of certified seed sold as bulk seed;

(ii) copies of the Bulk Sales Certificate;

(iii) copies of the Supplemental Bulk Certificate; and

(iv) a current inventory of seed of each variety available for sale.

(e) Selling seed of the Registered class in bulk. A maximum of two sales with a maximum of one delivery are allowed. The delivery is to be made by the certified seed grower directly to the consumer. The certified seed grower shall comply with the requirements of subsection (d)(1) of this section and maintain the following records:

(1) the amount of certified seed sold as bulk seed;

(2) copies of the Bulk Sales Certificate; and

(3) a current inventory of seed of each variety available for sale.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200702641

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Securities Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Securities Board proposes the repeal of §133.1, a form concerning a Texas open records request. The proposed repeal of the existing form will allow for the simultaneous adoption of a new form, which is being concurrently proposed.

Carla James, Director, Staff Services Division, and David Weaver, General Counsel, have determined that, for the first five- year period the proposed repeal is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. James and Mr. Weaver also have determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be the elimination of an outdated form. There will be no effect on micro or small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Government Code, Title 5, Chapter 552.

Statutes and codes affected: none applicable.

§133.1. Texas Open Records Request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702644

Denise Voigt Crawford
Commissioner
State Securities Board
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 305-8303

♦ ♦ ♦

7 TAC §133.1

The Texas State Securities Board proposes new §133.1, a form concerning a request for public information. The proposed new section adopts by reference a form that updates references to "public information" instead of "open records" and to the Office of the Attorney General as the agency having authority over the regulations for copy charges. Information on the existing form that is no longer needed has been omitted from the proposed new form. In addition, the new form incorporates various non-substantive and cosmetic changes. The existing form adopted by reference in §133.1 is being concurrently proposed for repeal.

Carla James, Director, Staff Services Division, and David Weaver, General Counsel, have determined that, for the first five- year period the proposed rule is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. James and Mr. Weaver also have determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that the form reflects accurate references, includes only needed information, and is more user-friendly. There will be no effect on micro or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Government Code, Title 5, Chapter 552.

Statutes and codes affected: none applicable.

§133.1. Texas Public Information Request.

The State Securities Board adopts by reference the public information request form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702645
Denise Voigt Crawford
Commissioner
State Securities Board
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 305-8303

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7 TAC §133.7

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Securities Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Securities Board proposes the repeal of §133.7, a form concerning an application for registration of securities. The proposed repeal of the existing form will allow for the simultaneous adoption of a new form, which is being concurrently proposed.

Micheal Northcutt, Director, Registration Division, has determined that, for the first five-year period the proposed repeal is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Northcutt also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be the elimination of an outdated form. There will be no effect on micro or small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-7 and 581-35.

Statutes and codes affected: none applicable.

§133.7. Application for Registration of Securities.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702646
Denise Voigt Crawford
Commissioner
State Securities Board
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 305-8303

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7 TAC §133.7

The Texas State Securities Board proposes new §133.7, a form concerning an application for registration of securities. The proposed new section adopts by reference a form that replaces an existing form to eliminate the requirement that a corporate applicant provide a certification regarding Texas franchise taxes. The certification is no longer required under the Texas Business Corporation Act. The new proposed form also incorporates various nonsubstantive and cosmetic changes. The existing form §133.7 is being concurrently proposed for repeal.

Micheal Northcutt, Director, Registration Division, has determined that, for the first five-year period the proposed rule is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to streamline the securities registration process by eliminating an unnecessary certification. There will be no effect on micro or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-7 and 581-35.

Statutes and codes affected: none applicable.

§133.7. Application for Registration of Securities.

The State Securities Board adopts by reference the application for registration of securities form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702647
Denise Voigt Crawford
Commissioner
State Securities Board
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 305-8303

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TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

CHAPTER 174. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

10 TAC §§174.1 - 174.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor, Economic Development and Tourism Division or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Governor, Texas Military Preparedness Commission (Office) proposes the repeal of Title 10, Part 5, Chapter 174, §§174.1 - 174.11, setting forth rules of the Defense Economic Adjustment Assistance Grant Program (Program).

The repeal of the rules is proposed because Senate Bill 1956 of the 80th Legislature updated Texas Government Code, Chapter 486 to reflect the current status of the Program under the Commission. New rules will be adopted and are proposed in this issue of the *Texas Register.* The new rules are necessary to accurately reflect current law and to reflect current program practices.

Al Casals, Executive Director of the Office, has determined that for the first five-year period that the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. There will be no effect on small businesses.

Mr. Casals has also determined that each year of the first five years that the repeal is in effect, the public will benefit from a better understanding of the Office and the Program. There is no anticipated economic cost to persons and no private property rights are affected by the repeal.

Comments on the proposed repeal may be submitted within 30 days of the publication of this notice to Michael D. Bryant, Assistant General Counsel, 1100 San Jacinto, or P.O. Box 12428, Austin, Texas 78711-2428. Comments may be faxed to Mr. Bryant at (512) 463-1932 or submitted electronically to *michael.bryant@governor.state.tx.us* within 30 days.

The repeal is proposed under Texas Government Code §486.002(d), which authorizes the Office to adopt rules necessary for the Program and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 486, creating the Defense Economic Adjustment Assistance Grant Program, is affected by the proposed repeal.

§174.1. Introduction and Purpose.

§174.2. Program Coverage.

§174.3. Eligibility for Funds.

§174.4. Documentation.

§174.5. Maximum and Minimum Awards.

§174.6. Application for Funds.

§174.7. Processing and Review of Applications.

§174.8. Availability of Funds.

§174.9. Awardee Responsibilities.

§174.10. Department Responsibilities.

§174.11. Reporting Responsibilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

TRD-200702553
Al Casals
Executive Director, Texas Military Preparedness Commission
Office of the Governor, Economic Development and Tourism Division
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 475-1475

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TITLE 13. CULTURAL RESOURCES

PART 5. TEXAS STATE CEMETERY COMMITTEE

CHAPTER 71. TEXAS STATE CEMETERY

13 TAC §71.11

Introduction and Background.

The Texas State Cemetery Committee (the "Committee") announces its intent to amend 13 Texas Administrative Code §71.11, concerning regulation of monuments in the Texas State Cemetery. The Committee oversees all operations of the Texas State Cemetery pursuant to Texas Government Code §2165.256(a) (Vernon Supp. 2006).

Section by Section Summary.

The proposed new rule clarifies acceptable designs for monuments proposed for placement on the grounds of the Texas State Cemetery. The proposed new rule further emphasizes the Committee's intent to preserve the prominence of the Medal of Honor monument.

Fiscal Note.

Mr. Scott Sayers, Chairman of the Committee, has determined that for each year of the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Public Benefit/Cost Note.

Mr. Sayers has also determined that for each year of the first five-year period the proposed rule is in effect, the public will benefit from further clarification regarding acceptable monument design.

Mr. Sayers has also determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the adoption of the proposed rule.

Mr. Sayers has also determined that for each year of the first five-year period the proposed rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon Supp. 2006).

Request for Comments.

Written comments on the proposed rule may be submitted to Rules Coordinator, Legal Services Division, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to *rulescomments@tbpc.state.tx.us*. For comments submitted electronically, please include "Monuments" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal to the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning this proposed new rule may be directed to Ms. Susan Maldonado, Legal Counsel for the Committee, at (512) 463-3960.

Statutory Authority.

The new rule is proposed under the Texas Government Code, §2165.261(i), which requires the Committee to adopt rules regulating the monuments erected on the grounds of the Texas State Cemetery.

Cross Reference to Statute.

The proposed rule affects §2165.256 of the Texas Government Code.

§71.11 Monuments.

(a) Monuments are subject to the approval and regulation of the Committee.

(b) All monument designs shall be submitted to the Cemetery Superintendent for review and compliance with the requirements set forth by the Committee. All monument design submissions shall contain the information on the application form available at the Cemetery office. Incomplete submissions will be returned.

(c) The Committee specifically reserves the right to reject any monument design, if, in the opinion of the Committee, the quality or craftmanship of the monument design is not suitable, blocks the view of surrounding monuments or does not comply with the following:

(1) Only selected natural stone from established quarries, or bronze meeting the specifications of the United States Bureau of Standards should be used for monuments. In all cases, craftsmanship should be of superior quality.

(2) Curbs, fences, borders, plantings or enclosures around any burial spaces must be approved by the Committee.

(3) Monuments and inscriptions on any monument shall be accurate and in keeping with the respect and dignity for the interred and for the Cemetery as a place of honor and to memorialize noteworthy Texans.

(4) Temporary markers of wood, or concrete are prohibited. Temporary metal markers provided by funeral homes are permitted until replaced by a permanent monument.

(5) Monuments shall be constructed within the following dimensional specifications:

(A) Maximum height: 7 feet;

(B) The footprint of the monument shall not cover more than 20% of the surface of the lot being 7 feet in depth and 6.66 feet (80 inches) in width;

(C) If the width to height ratio of the monument exceeds a 2 to 1 ratio, the Committee will review the design. The design, size, and location of the monument will be considered by the Committee in making a decision.

(D) A flush installed ledger stone shall not exceed 7 feet in depth and 6.66 feet in width.

(6) The Committee may also evaluate any proposal for a new monument to ensure that the proposed design does not detract or otherwise impact the prominence of the Medal of Honor monument.

(d) Aboveground vaults, crypts and mausoleums are prohibited, except for interment in the columbarium.

(e) Monuments are the property of the state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702584
Susan Maldonado
Acting General Counsel
Texas State Cemetery Committee
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 236-6171

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATION

22 TAC §77.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to rule §77.2 of this title, relating to publicity, to provide clearer standards, particularly with regards to telemarketing, testimonials, and multidisciplinary clinics.

In preparing this rule, the Board looked at the Florida Board of Chiropractic Medicine's rule on solicitation, Fla. Admin. Code 64B2-15.002, and the New Mexico Board of Chiropractic Examiners' rule for advertising, N.M. Code R. §16.4.1.12.

The existing rule would be labeled as subsection (a) and amended to clarify that the rule applies both to registered facilities as well as licensees. The new subsection (b) would stipulate that public communications must not describe services inconsistent with the scope of chiropractic as described under §75.17 of this title, relating to scope of practice.

The new subsection (c) would address telemarketing and is modeled after the New Mexico rule. Telemarketing is the practice of placing telephone calls to offer services to a list of prospective patients. A licensee or registered facility engaging in telemarketing directly, or through an agent, would be prohibited from misrepresenting themselves as being associated with an insurance company or another doctor of chiropractic or another chiropractic group or facility. Telemarketing could not include a promise of successful chiropractic treatment. At the start of each call, a person making a telemarketing call would be required to identify themselves and state who they represent. A licensee or registered facility would be required to keep for a minimum of two years each script used for a telemarketing call and a log of all calls made that must include the date, telephone number, and the name of each person called.

Under subsection (d), licensees or registered facilities would be required to keep for two years a signed statement that was used to support any statements used in any public communication.

Under subsection (e), licensees or registered facilities would be required to clearly differentiate a chiropractic office, clinic, or facility from another business or enterprise in any form of public communication. This is a restatement of Texas Occupation Code §201.502(a)(19), relating to grounds for refusal, revocation, or suspension of license. Under subsection (f), licensees would be required to identify themselves as either a "doctor of chiropractic" ,"DC," or "chiropractor." This is based on Texas Occupations Code §201.002(b)(4), relating to practice of chiropractic, and §75.1(a)(2) of this title, relating to grossly unprofessional conduct. Subsection (f) would also stipulate that if each licensee at a registered facility has identified themselves as required, then the facility name need not include "Chiropractic" or similar language.

Glenn Parker, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no additional costs to local governments as a result of enforcing or administering the revised rule. The Board of Chiropractic Examiners may incur a slight but not fiscally significant increase in enforcement costs associated with the new sections of this rule.

Mr. Parker has also determined that for each year of the first five-year period the amendment is in effect the public benefit will be a reduction in potentially false, deceptive or misleading telemarketing calls made to members of the public by doctors of chiropractic or their agents. Mr. Parker has determined that licensees and their agents may incur small annual expenses (estimated at less than $100 annually) related to the requirements to keep and maintain for at least two years copies of all telemarketing scripts and logs containing information about persons called, their telephone numbers, and the dates of the calls. There will be no effect on small or micro businesses, excluding chiropractic clinics and their agents.

Comments on the proposed amendments may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe St. Tower III Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that this amendment is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

No other statutes, articles, or codes are affected by the proposed rule

§77.2. Publicity.

(a) A registered facility or licensee shall not, on behalf of himself, his partner, associate, or any other licensee or facility affiliated with him, use or participate in the use of any form of public communication which contains a false, fraudulent, misleading, deceptive, or unfair statement of claim, or which has the tendency or capacity to mislead or deceive the general public.

(b) In any form of public communication, a licensee or registered facility shall not describe services that are inconsistent with the

practice of chiropractic as described under §75.17 of this title, relating to scope of practice.

(c) A licensee or registered facility engaging in, or authorizing another to engage in telemarketing of prospective patients shall not misrepresent to the person called any association with an insurance company or another doctor of chiropractic or another chiropractic group or facility.

(1) A licensee, registered facility, or their agent, engaging in telemarketing shall not promise successful chiropractic treatment of injuries or make any other communication which would be prohibited under subsection (a) of this section.

(2) A licensee, registered facility, or their agent, engaging in telemarketing are required, at the start of each call, to inform the person called who they are (caller's name) and who they represent (clinic/doctor).

(3) A licensee or registered facility engaging in telemarketing, either directly or through an agent, shall keep a copy of each script used for calling and a log of all calls made that shall include the date, telephone number, and the name of each person called. Such scripts and logs shall be maintained for a minimum of two years.

(d) Licensees or registered facilities that intend to include a testimonial as part of any form of public communication shall maintain a signed statement from that person or group to support any statements that may be used in any public communication for a minimum of two years from publication of the testimonial.

(e) Licensees or registered facilities shall clearly differentiate a chiropractic office, clinic, or facility from another business or enterprise in any form of public communication.

(f) Licensees shall identify themselves as either "doctor of chiropractic," "DC," or "chiropractor" in all forms of public communication. If each licensee that practices in a registered facility has identified themselves as required above, then the facility name need not include "chiropractic" or similar language.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702652
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 305-6901

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG
SUBCHAPTER Z. INSPECTION FEES FOR RETAIL FOOD ESTABLISHMENTS

25 TAC §§229.470 - 229.474

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §§229.470 - 229.474, concerning inspection fees for retail food establishments.

BACKGROUND AND PURPOSE

The purpose of these new rules is to implement Texas Health and Safety Code, §437.0125(c), which authorizes the department to collect fees for inspecting a facility. Facilities that are exempt from obtaining a Food Establishment Permit under 25 Texas Administrative Code (TAC), §229.371, but must comply with 25 TAC, §§229.161 - 229.171, and §§229.173 - 229.175, require inspections for various reasons such as other agency licensing requirements, federal mandates, governmental entities that do not have inspection staff, and requirements to receive federal grants or subsidies. As the department is unable to recover the costs for these inspections, these new rules provide a process for such entities to request an inspection and pay an inspection fee prior to the state conducting the inspection.

SECTION-BY-SECTION SUMMARY

New §229.470 defines the purpose of these rules. New §229.471 provides definitions to clarify terminology. New §229.472 outlines the fees, applications procedures for requesting an inspection, and clarifies facilities subject to this rule. New §229.473 describes the minimum standards that facilities must follow when engaging in food service activities. New §229.474 explains the department's ability to refuse an inspection request, conduct hearings, and assess administrative penalties.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each calendar year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of $652,100 the first calendar year and $652,100 each year for calendar years two through five due to the implementation of new inspection fees. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. There will be a new inspection fee for businesses or persons who are not required to obtain a Food Establishment Permit under 25 TAC, §229.371, but that require an inspection for various reasons such as other agency licensing requirements, federal mandates, and/or requirements to receive federal grants or subsidies. The probable economic cost to persons requesting these inspections is $150 per inspection requested. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding to operate the program to provide food service inspections to entities that perform food service and require the inspections to continue the operation for various reasons. As these facilities are exempt from permitting under the Texas Food

Establishment Rules, these new rules would provide a mechanism for these facilities to obtain inspection services to ensure their facilities are operated in a manner to protect health.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Deborah Marlow, Food Establishments Group, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6753 or by email to Deborah.Marlow@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing will be held on Friday July 13th from 8:30 a.m. - 12:00 noon at the Texas Department of State Health Services, Room K-100, 1100 West 49th Street, Austin. Texas 78756. Further information may be obtained from Deborah Marlow, Food Establishments Group, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6753.

LEGAL CERTIFICATION

The Department of State Health Services, Deputy General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, Chapter 437, which authorizes the department to collect fees for inspecting facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect the Health and Safety Code, Chapters 437 and 1001.

§229.470. Purpose.

The purpose of these sections is to implement Texas Health and Safety Code, Chapter 437, which requires the department to collect fees to conduct inspections requested or required by certain food establishments when exempted from permitting by the department.

§229.471. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Child care center--Any facility licensed by the regulatory authority to receive 13 or more children for child care which prepares food for on-site consumption. A child care center is classified as a food establishment.

(2) Department--The Department of State Health Services.

(3) Food--A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(4) Food employee--An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(5) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in §229.162 of this title (relating to Definitions); or

(vii) a private home that receives catered or home-delivered food.

(D) All definitions found in §229.162 of this title under the Texas Food Establishment Rules are applicable to these sections except that, for purposes of inspection or payment of inspection fees only, the term "food establishment" does not include:

(i) food establishments permitted and inspected under authority granted to Home-Rule or Type A General-Law Municipalities;

(ii) federally inspected food establishments on federal property;

(iii) food establishments at correction facilities under the inspection of the Texas Department of Criminal Justice;

(iv) food establishments on state campuses inspected by state college or university personnel in accordance with the requirements of §229.373 of this title (relating to Minimum Standards for Permitting and Operation);

(v) food establishments licensed under the Health and Safety Code, Chapter 431, as manufacturers of food;

(vi) mobile food units permitted and inspected under the authority granted to Home-Rule or Type A General-Law Municipalities and which operate only within their respective jurisdictions.

(6) Food service establishment--A food establishment as defined in these rules.

(7) Group residence--A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons such as a retirement home, correctional facility, or a long-term care facility.

(8) Mobile food establishment--A vehicle mounted food establishment that is readily moveable.

(9) Nonprofit organization--A civic or fraternal organization, charity, lodge, association, proprietorship or corporation possessing a 501(C) exemption under the Internal Revenue Code; or religious organizations meeting the definition of "church" under the Internal Revenue Code, §170(b)(1)(A)(I). Nonprofit organizations are exempted from obtaining a permit as specified in §229.372(e) of this title (relating to Permitting Fees and Procedures). Nonprofit organizations are not exempted from the payment of an inspection fee as required under §229.472 of this title.

(10) Person--An association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(11) Potentially hazardous food--

(A) Potentially hazardous food (PHF) means a food that requires time and temperature control for safety (TCS) to limit pathogen growth or toxin production.

(B) Potentially hazardous food includes:

(i) an animal food (a food of animal origin), including fresh shell eggs, that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under subparagraph (A) of this paragraph; and

(ii) a food whose pH/a_w interaction is designated as PHF/TCS in one of the tables listed in subparagraph (D) of this paragraph, unless a product assessment or vendor documentation acceptable to the regulatory authority is provided.

(C) Potentially hazardous food does not include:

(i) an air-cooled hard-boiled egg with shell intact, or a shell egg that is not hard-boiled, but has been treated to destroy all viable Salmonellae;

(ii) a food whose pH/a_w interaction is designated as non-PHF/non-TCS in one of the tables in subparagraph (D) of this paragraph;

(iii) a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(iv) a food for which a product assessment, including laboratory evidence, demonstrates that time and temperature control for safety is not required and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or

(v) a food that does not support the growth of microorganisms as specified under subparagraph (A) of this paragraph even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

(D) Potentially hazardous food does not include food that, because of pH, water activity (a_w) or the interaction of pH and a_w, is considered non-PHF/non-TCS in Table A or B below. Guidance for using the tables is provided in the document entitled "Using pH, a_w, or the Interaction of pH and a_w to Determine If a Food Requires Time/Temperature Control for Safety (TCS)". Copies of the guidance document may be downloaded from the following website: http://www.dshs.state.tx.us, or may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182.

(i) Table A.
Figure: 25 TAC §229.471(11)(D)(i)

(ii) Table B.
Figure: 25 TAC §229.471(11)(D)(ii)

(12) Pushcart--A non self-propelled mobile food unit limited to serving nonpotentially hazardous food or potentially hazardous foods requiring a limited amount of preparation as authorized by the regulatory authority. A pushcart is classified as a mobile food unit. A pushcart does not include non self-propelled units owned and operated within a retail food store.

(13) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public roadway or highway. Foods shall not be prepared or processed by a roadside food vendor. A roadside vendor is classified as a mobile food establishment.

(14) School food establishment--A food service establishment where food is prepared or served and intended for service primarily to students in institutions of learning including, but not limited to, public and private schools, including kindergarten, preschool and elementary schools, junior high schools, high schools, colleges, and universities. A school food establishment is classified as a food establishment.

(15) Temporary food establishment--A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

§229.472. Inspection Fees and Procedures.

(a) Inspection fees. A person who operates a non-permitted food establishment, that requests an inspection be conducted by the

department, shall pay an inspection fee for each inspection of the establishment. All inspection fees are nonrefundable.

(1) A school food establishment that requests two inspections per year shall pay for both inspections before the first inspection is conducted by the department.

(A) The school food establishment fee is $300 for two inspections.

(B) An application and inspection fee must be submitted between September 15 and October 31 annually.

(2) A person who operates a non-permitted food establishment that is not a school food establishment shall pay an inspection fee for each inspection of the establishment.

(A) The inspection fee is $150 per inspection.

(B) An application and inspection fee must be submitted to the department at least 6 weeks prior to the earliest desired inspection date.

(b) Non-permitted food establishments, other than schools, inspection fee requirement. Non-permitted food establishments, that are nonprofit organizations as defined in §229.471(9) of this title (relating to Definitions), are not exempted from the payment of an inspection fee as required under subsection (a) of this section. Nonprofit organizations are exempted from obtaining a permit as specified in §229.372(e) of this title (relating to Permitting Fees and Procedures). Nonprofit organizations shall comply with the requirements of §229.473 of this title (relating to Minimum Standards for Permitting and Operation). Any civic or fraternal organization, charity, lodge, association, proprietorship, corporation or church not meeting the definition of "nonprofit organization" must obtain a permit, pay the required fee, and comply with the requirements for permitted food establishments. Internal Revenue Service documentation of nonprofit status shall be provided if requested by the department.

(c) The department shall not inspect or collect an inspection fee from food establishments permitted or inspected by a county or public health district under the Texas Health and Safety Code, Chapter 437, or food establishments permitted or inspected under authority granted to Home-Rule or Type A General-Law Municipalities.

(d) Application for inspection request. The inspection request application shall be completed on a form furnished by the department and shall contain the following information:

(1) the name under which the business is operated;

(2) the mailing address and street address of the establishment; and

(3) the signature of the owner, operator, or other authorized person.

(e) Two or more establishments. If a person owns or operates two or more establishments, each establishment shall request inspections separately by listing the name and address of each establishment on separate application forms. A school district may submit a single application and attach a listing of each school food establishment to be inspected.

(f) Application form. Copies of the application for inspection request form may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or online at www.dshs.state.tx.us/fdlicense.shtm.

(g) Texas Online. Applicants may submit an application for inspection request under these sections electronically by the Internet through Texas Online at www.texasonline.state.tx.us, when available. The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

§229.473. Minimum Standards for Permitting and Operation.

All food establishments shall be operated in accordance with the requirements specified in §§229.161 - 229.171 and §§229.173 - 229.175 of this title (relating to Texas Food Establishments). Copies may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or may be downloaded from the following website: www.dshs.state.tx.us/foodestablishments.shtm.

§229.474. Refusal of Inspection Request; Administrative Penalties.

(a) Basis. The department may refuse an application for an inspection for violations of the requirements of §229.472 of this title (relating to Inspection Fees and Procedures) or §229.473 of this title (relating to Minimum Standards for Permitting and Operation), or for interference with a department representative in the performance of their duties under these sections.

(b) Hearings. Any hearings for the refusal of an inspection are governed by §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) or under the provisions of the Government Code, Chapter 2001, the Administrative Procedures Act.

(c) Administrative penalties. Administrative penalties, as provided in the Health and Safety Code, §437.018, and in §229.261 of this title (relating to Assessment of Administrative Penalties), may be assessed for violation of these sections or requirements specified in §§229.161 - 229.171, and §§229.173 - 229.175 of this title (relating to Texas Food Establishments).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

TRD-200702570
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 15. SURPLUS LINES INSURANCE
SUBCHAPTER A. GENERAL REGULATION OF SURPLUS LINES INSURANCE

28 TAC §§15.3 - 15.5

The Texas Department of Insurance proposes amendments to §§15.3 - 15.5, concerning proof of financial responsibility for resident surplus lines agents. The proposed amendments are necessary to implement SB 1564, 79th Legislature, Regular Session, effective January 1, 2006. SB 1564 repealed the Insurance Code §981.203(b)(3) and §981.206, which required applicants and surplus lines agents to provide proof of financial responsibility to the Department regarding transactions with insureds under surplus lines insurance policies.

Pursuant to this change in law, surplus lines agents are no longer required to provide proof of financial responsibility to the Department. Accordingly, the proposed amendments remove the requirements from §§15.3 - 15.5 that resident surplus lines agents provide proof of financial responsibility to the Department in the form of a $50,000 surety bond as a condition for licensure. These proposed amendments also update statutory citations in §§15.3 - 15.5 as a result of the enactment of the nonsubstantive revision of the Insurance Code by the 77th Legislature, Regular Session, HB 2811, which became effective on June 1, 2003. Additionally, the proposal revises the plural term "Chapters" in §15.5(a) to singular form for consistency with the updated reference to the Insurance Code §981.006.

The proposed amendments are necessary to implement SB 1564, the purpose of which includes furthering uniformity and reciprocity among the various states, as set forth in the bill analysis (TEXAS STATE BUSINESS & COMMERCE COMMITTEE, BILL ANALYSIS (Enrolled), SB 1564, 79th Legislature, Regular Session (May 31, 2005)). The Gramm-Leach-Bliley Act (15 U.S.C.A. 93 §6751(c)(1) (1999)) contains a reciprocity condition applicable to the interstate licensing of insurance agents, providing for consistent licensing requirements for resident and nonresident producers. It further requires a reciprocal state to grant licensure to a nonresident producer who provides the following credentials: (i) a request for licensure; (ii) the application for licensure that the producer submitted to its home state; (iii) proof that the producer is licensed and in good standing in its home state; and (iv) the payment of any requisite fee to the appropriate authority.

Prior to the implementation of SB 1564, reciprocity under the Gramm-Leach-Bliley Act had the practical effect of imposing a financial responsibility requirement on resident surplus lines applicants but waiving this requirement for nonresident applicants. To remedy this disparity in licensing requirements, the 79th Legislature in SB 1564 repealed §981.203(b)(3) and §981.206 of the Insurance Code. Under §981.203(b)(3), surplus lines agents were required to provide proof of financial responsibility to the Department as a condition for licensure. Under §981.206, a surplus lines agent was required to provide an adequate proof of financial responsibility to the Department regarding transactions with insureds under surplus lines insurance policies. In accordance with the repeal of these two statutes, the proposed amendments delete the obsolete financial responsibility requirement for resident applicants under current §§15.3 - 15.5.

Though the notice requirements in §15.4(d) and §15.4(e)(1) are currently in the rule as part of the provisions on proof of agent's financial solvency, the Department has determined that it is necessary to retain these provisions. The Department has the responsibility to impose requirements necessary to make regulation and control of surplus lines insurance reasonably complete and effective. By retaining the notice provisions contained in §15.4(d) and §15.4(e)(1), the Department may more effectively monitor the surplus lines market to ensure compliance with licensing requirements, thereby protecting consumers who purchase surplus lines policies. The requirement that a surplus lines agency notify the Department of the name and surplus lines license number of each individual surplus lines agent within 30 days of commencement or cessation of employment is applicable to both resident and nonresident surplus lines agencies. However, to prevent a 30-day gap in required compliance with this requirement as a result of the proposal, §15.4(d), is also amended to delete the effective date provisions, which are no longer applicable. Because the Department is proposing to delete the obsolete financial requirement for resident applicants, it is necessary to amend the title of §15.4 to reflect that the section will continue to require the current notice provisions relating to commencement and cessation of the employment of individual surplus lines agents.

The proposed amendment to §15.3(d)(3) deletes the requirement that a surplus lines agent obtain a surety bond as a condition of licensure. The proposed amendment to §15.4 deletes subsections (a) - (c) and redesignates the notice provisions in existing §15.4(d) and (e) as §15.4(a) and (b). The proposed amendment to §15.5(a)(5) deletes the provision authorizing the Commissioner to sanction a surplus lines agent that fails to procure and maintain a surety bond and redesignates the remaining paragraphs as §15.5(a)(5) and (6).

Matt Ray, Deputy Commissioner, Life, Health and Licensing Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Ray also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the proposal will be consistency of the rule with the law, the purpose of which includes streamlining the licensing process, furthering uniformity and reciprocity among the various states in connection with the licensure of surplus lines agents, and saving state law regarding licensure of surplus lines agents from potential federal preemption. There will be no additional cost to persons required to comply with the proposal because the amendments remove an obsolete licensing requirement. In fact, agents may realize a savings in cost because they will no longer be required to obtain a surety bond as a condition precedent for being licensed and as a condition for continuing the licensure. Because there are no costs for compliance, the impact will not vary between the smallest and largest businesses. Also, because there are no costs for compliance, the proposed amendments will not have an adverse effect on small and micro businesses.

The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a taking impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 6, 2007 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Matt Ray, Deputy Commissioner, Life, Health and Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed pursuant to the Insurance Code §§981.001(b)(2), 981.009, 981.202, 981.203(b), 981.218, and 36.001. Section 981.001(b)(2) sets forth the purpose and scope of the regulation of surplus lines insurance generally, stating

that it is necessary to provide for the regulation, taxation, supervision, and control of surplus lines transactions by imposing requirements necessary to make regulation and control of surplus lines insurance reasonably complete and effective. Section 981.009 authorizes the Commissioner to adopt rules to implement Chapter 981 or to satisfy requirements under federal law or regulations. Section 981.202 prohibits an agent licensed by this state from issuing or causing to be issued an insurance contract with an eligible surplus lines insurer unless the agent possesses a surplus lines license issued by the Department. Section 981.203(b) requires an agent to: (i) pay an application fee as determined by the Department; and (ii) submit a properly completed license application. Section 981.218 requires the Commissioner to monitor the activities of surplus lines agents as necessary to protect the public interest. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Chapter 981.

§15.3. Licensing of Surplus Lines Agents.

(a) (No change.)

(b) The following activities in a surplus lines agency do not require a surplus lines license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts or coverages, and/or the employee's compensation is not varied by the volume of premiums taken and received:

(1) - (3) (No change.)

(4) contacting clients, insureds, agents, other persons, or insurers to gather and transmit information regarding claims and losses under the policy to the extent that the contact does not require a licensed adjuster as set forth under Insurance Code Chapter 4101 [~~Article 21.07-4~~].

(c) (No change.)

(d) Before any surplus lines agent's license shall be issued, the following must be submitted by an applicant seeking a surplus lines license:

(1) an appropriate, fully completed written application; and

(2) the fee specified by [~~§~~]§19.801 and §19.802 of this title (relating to General Provisions Regarding Licensing Fees and License Renewal and Amounts of Fees).[~~;~~]

[~~(3) a surety bond as required under §15.4 of this title (relating to Proof of Agent's Financial Solvency), unless the commissioner waives, in part or in whole, the bond as necessary to comply with federal law.~~]

(e) Texas resident applicants and nonresident applicants who do not hold a surplus lines license in their state of residence or whose state of residence does not license Texas residents on a reciprocal basis as determined by the department, shall meet all licensing requirements as set forth in the Insurance Code Chapter 981 [~~Article 1.14-2~~]. Nonresident applicants under this section shall also comply with the Insurance Code §4056.051 [~~Article 21.11 §1(e)~~].

(f) Nonresident applicants holding a surplus lines license in good standing in the agent's state of residence and meeting the requirements of the Insurance Code §4056.052 [~~Article 21.11 §1(a)(2)(A)~~] shall meet all the licensing requirements of the Insurance Code Chapter 981 [~~Article 1.14-2~~] to the extent that such Chapter 981 [~~Article 1.14-2~~] requirements are not waived by the commissioner under §4056.055 [~~Article 21.11 §1(c)~~].

(g) Each surplus lines license issued to an agent shall be valid for a term expiring two years after the date of issuance or as otherwise established by the commissioner under the Insurance Code §4003.001 [~~Article 21.01-2 §1A(a)~~]. The license may be renewed by submitting a renewal application and a non-refundable license fee as specified by [~~§~~]§19.801 and §19.802 of this title.

§15.4. Notice to Department for Commencement and Cessation of Employment of Individual Surplus Lines Agents [~~Proof of Agent's Financial Solvency~~].

[~~(a) As set forth in this section and unless waived by the commissioner, each licensed surplus lines agent as a condition precedent for being licensed and as a condition for continuing the license in force shall offer proof of financial solvency and demonstrate financial responsibility by filing with the department a surety bond in the amount of not less than $50,000 on a form specified by the department. The surety on the bond may be an eligible surplus lines insurer that is acceptable to the commissioner. The surety bond shall remain a condition for the surplus lines agent's license. The surety bond must provide that the surety will give no less than 30 days written notice of bond termination to the licensee and the department. A binding commitment on the part of the surety to issue a bond pursuant to this section within a period of not more than 30 days shall be sufficient in connection with any application for a license. The commissioner may waive the requirement, in part or in whole, as necessary to comply with federal law to promote licensing uniformity and reciprocity among the states.~~]

[~~(b) Individuals licensed as surplus lines agents may demonstrate proof of financial responsibility by either:~~]

[~~(1) obtaining a separate bond; or~~]

[~~(2) relying on the bond of the surplus lines agency that employs the agent.~~]

[~~(c) Entities licensed as surplus lines agencies must obtain a separate bond and may not rely on the bond of any other individual or agency to demonstrate proof of financial responsibility.~~]

(a) [~~(d)~~]Within [~~Without regard to whether or not the financial responsibility bond has been waived, within 30 days after the effective date of this section, and thereafter within~~] 30 days of employment, each licensed surplus lines agency, both resident and nonresident, shall notify the department of the name and Texas surplus lines agent license number of each individual agent employed by the agency.

(b) [~~(e)~~]Within 30 days after an individual surplus lines agent ceases to be employed by a licensed surplus lines agency for any reason,[~~:~~]

[~~(1)~~] the licensed surplus lines agency, whether resident or nonresident, shall notify the department that the individual is no longer employed by that agency.[~~; and~~]

[~~(2) the individual agent shall demonstrate proof of financial responsibility to the department as specified in subsection (b) of this section.~~]

§15.5. Sanctions.

(a) The commissioner may impose any sanction or remedy set forth in the Insurance Code Chapter [~~Chapters~~] 82 and §981.006 [~~21, Article 1.14-2 §§17 and 17A~~], or any other applicable laws or statutes, if the commissioner determines, after notice and an opportunity for hearing, that the applicant or license holder individually or through any officer, director, or shareholder:

(1) - (4) (No change.)

[(5) failed to procure and maintain a surety bond, if applicable, in accordance with this subchapter;]

(5) [(6)] failed to otherwise maintain the qualifications for a surplus lines license; or

(6) [(7)] is in violation of, or has failed to comply with the Insurance Code, this subchapter, or any other applicable laws or regulations of this state.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2007.

TRD-200702594
Brenda Caldwell
Assistant General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER HH. MILITARY SALES PRACTICES

28 TAC §§21.4201 - 21.4207

The Texas Department of Insurance proposes new Subchapter HH, §§21.4201 - 21.4207, concerning military sales practices, to protect active duty service members of the United States Armed Forces from certain dishonest and predatory practices with respect to the sale of life insurance. This proposal sets forth the basis for the determination that activities in the proposed subchapter are false, misleading, deceptive or unfair acts or practices. This proposal is necessary because of the Department's finding, during its investigation commenced in 2004 of life insurance sales practices to active duty service members located in Texas, of numerous violations by insurance agents of United States Department of Defense (DoD) policy, and because of the findings of the United States Congress that active duty service members have been subjected to abusive and misleading life insurance sales practices. During its investigation, the Department determined that some insurance agents were violating DoD policy prescribed in DoD Instruction 1344.07 - PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS (DoD Instruction 1344.07) governing commercial solicitation on military installations. The purpose of DoD Instruction 1344.07 is to protect the welfare of DoD personnel as consumers by establishing uniform procedures for personal commercial solicitation and sales to DoD personnel. The Department gained knowledge that agents licensed by the Department had committed the following violations of DoD policy prescribed in DoD Instruction 1344.07 on Texas military installations: soliciting the purchase of insurance products door-to-door in service member residential housing areas without first establishing an appointment; soliciting service members in a mass audience; soliciting service members during normally scheduled duty hours; soliciting on military installations without the permission of the installation commander or commander's designee; circumventing requirements established by the DoD or a branch of the Armed Forces relating to life insurance transactions; participating in education programs sponsored by the Armed Forces; participating in allotment processing directing service member pay to a third party for the purchase of life insurance; offering promotional incentives to facilitate life insurance sales transactions; using titles implying affiliation with the U.S. Government or Armed Forces; giving misleading descriptions of life insurance product features; using deceptive lead materials; failing to disclose that the product to be sold at an appointment would be life insurance, even upon direct questioning; and failing to provide service member life insurance applicants with required information following sales.

It is the Department's position that insurance sales practices committed in violation of DoD policy enacted to safeguard the consumer welfare of DoD personnel constitute false, misleading, unfair or deceptive trade practices. Life insurance solicitation in violation of DoD policy is misleading and deceptive because solicited service members incorrectly believe that the insurer or insurance agent's activities are sanctioned or authorized by the military installation commander, and that the insurers or insurance agents have met certain standards and requirements intended to protect service members. Violations of DoD policies governing commercial solicitation are unfair because they allow violating insurers and insurance agents an undue competitive advantage over compliant insurers and insurance agents. Insurers and insurance agents violating DoD policies are given an undue competitive advantage because they have access to, and communications with, service members in times, places, and manners not afforded to compliant insurers and insurance agents.

In the course of its investigation, the Department also found that insurers licensed by the Department had engaged in establishing fictitious accounts at depository institutions into which premiums for life insurance were deposited directly from service members' pay. This resulted in the life insurance premium deduction being falsely described on service members' Leave and Earnings Statements as "BANK ACCT ALLOT," the notation for a deposit to a checking or savings account held by the service member. Some agents were found to have given deceptive descriptions regarding the propriety of Servicemembers' Group Life Insurance, a low-cost group life insurance program offered to service members and subsidized by the federal government. It is the Department's position that these activities constitute false, misleading, unfair or deceptive trade practices because they involve untrue written and oral statements made by insurers or insurance agents.

The United States Government has also addressed the issue of deceptive insurance sales practices to service members. The Military Personnel Financial Services Protection Act, Public Law 109-290 (Public Law), was passed by Congress and signed into law by President Bush in 2006. Included as rationale for the Public Law, Congress decided that given the great sacrifices that members of the Armed Forces make to protect the United States, they must be offered first-rate financial products. Congress found it imperative that members of our Armed Forces be shielded from "abusive and misleading sales practices," and protected from certain life insurance products that are "improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel." The Public Law finds that a need exists for regulation of life insurance sales practices on military installations, and expressly provides that state laws and regulations governing insurance are applicable on federal land and military installations.

Proposal of the rule defining certain trade practices as unfair methods of competition or false, misleading, deceptive or unfair acts or practices in the sale and solicitation of life insurance is within the scope of authority of the Texas Department of Insurance. Under the authority of Insurance Code §541.003 and §541.401, the Department has determined that certain acts or trade practices are false, misleading, deceptive or unfair with respect to individuals serving in the United States Armed Forces. Section 541.003 prohibits trade practices "defined in this chapter or as determined under this chapter" to be unfair methods of competition, or false, misleading, deceptive or unfair acts or practices in the business of insurance. The phrase "as determined under this chapter" is authority for the Commissioner to determine unfair methods of competition or false, misleading, deceptive or unfair acts or practices through the rulemaking process. Section 541.401(a) authorizes the Commissioner to adopt and enforce reasonable rules the Commissioner determines necessary to accomplish the purposes of Chapter 541. The purpose of Chapter 541, as stated in §541.001, is to regulate trade practices in the business of insurance by defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices, and prohibiting those trade practices.

Proposed §21.4201 states the purpose of the subchapter as setting forth standards to protect active duty service members of the United States Armed Forces from certain sales practices by declaring them false, misleading, deceptive or unfair.

Proposed §21.4202(a) defines the scope of the rule as applying only to the solicitation or sale of life insurance and annuity products by insurers or agents to active duty service members of the United States Armed Forces. Proposed §21.4202(b) specifies that the proposal applies only to acts or practices committed on or after the effective date of the subchapter. Proposed §21.4202(c) states that the subchapter applies in addition to statutes and rules governing marketing and solicitation and deceptive or unfair trade practices, and shall not be interpreted to limit those statutes and rules. This subsection also states that the Commissioner's authority to discipline and bring enforcement action under the proposed subchapter is in addition to existing authority.

Proposed §21.4203 exempts the following types of insurance products from the rule: credit insurance; certain group life and group annuity products; certain insurance policies issued by the same company that issued an existing policy; individual stand-alone health policies, including disability income policies; contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance, as authorized by 38 U.S.C. §§1965, et seq.; certain life insurance policies offered through non-profit military associations not underwritten by an insurer; contracts funding Employee Retirement and Income Security Act plans; plans described by Section 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer; certain government or church welfare benefit plans; deferred compensation plans of state or local governments or certain tax exempt organizations; certain nonqualified deferred compensation arrangements; settlements of or assumptions of liabilities relating to personal injury litigation or any dispute resolution process; or prearranged funeral contracts. The Department includes these exemptions from the proposed subchapter because the Department is not aware of false, misleading, unfair or deceptive sales practices relating to these types of insurance or contracts targeting service members.

The section also specifies that nothing in the rule shall be construed to restrict the ability of certain organizations to educate members of the United States Armed Forces in accordance with DoD Instruction 1344.07 or successor directive. The section states that general advertisements, direct mail, internet marketing and certain telephone marketing do not constitute solicitation for purposes of the proposed rule, but that the proposed rule does apply to in person, face-to-face meetings established as a result of the solicitation exemptions.

Proposed §21.4204 defines the following terms used in the rule: Active Duty; Department of Defense (DoD) Personnel; Door to Door; General Advertisement; Insurer; Insurance Agent; Known or Knowingly; Life Insurance; Military Installation; MyPay; Service Member; Side Fund; Specific Appointment; and United States Armed Forces.

Proposed §21.4205 declares the following acts or practices false, misleading, deceptive or unfair when committed on a military installation: knowingly soliciting the purchase of a life insurance product "door-to-door" without first establishing a specific appointment; soliciting service members in a group or mass audience or setting where attendance is not voluntary; knowingly making appointments with or soliciting service members during their normally scheduled duty hours; making appointments with or soliciting service members in certain service member living areas or other areas where the installation commander has prohibited solicitation; soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee; posting unauthorized bulletins, notices or advertisements; failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited for life insurance or encouraging such service members solicited not to complete or submit a DD Form 2885; or knowingly accepting an application for life insurance or issuing a life insurance policy on the life of an enlisted member of the United States Armed Forces without first obtaining a completed copy of certain required forms.

The proposed section also provides that using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members or using an insurance agent to participate in any United States Armed Forces sponsored education or orientation program are corrupt practices or improper influences or inducements and are declared to be false, misleading, deceptive or unfair.

Proposed §21.4206(a) provides that the following acts or practices are corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair regardless of location: submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance; knowingly receiving funds from a service member for the payment of premium on a life insurance policy from a depository institution with which the service member has no formal banking relationship; entering into an agreement whereby funds received from a service member by allotment for the payment of life insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in the rule; entering into any agreement with a depository institution for the purpose of receiving funds from a service member in which the depos-

itory institution agrees to accept direct deposits from a service member with whom it has no formal banking relationship for the payment of premium on a life insurance policy; using DoD personnel as a representative or agent in any capacity with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel; offering or giving anything of value to DoD personnel to procure his or her assistance in assisting with the solicitation or sale of life insurance to another service member; knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; or advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

Proposed §21.4206(b) states that the following acts or practices lead to confusion regarding source, sponsorship, approval or affiliation and are declared false, misleading, deceptive or unfair regardless of location: making any representation, or using any device, title, descriptive name or identifier that may confuse or mislead a service member into believing that the insurer, agent or life insurance product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity, or soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that may confuse or mislead a service member into believing that either the insurer, agent or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces. The subsection provides examples of prohibited insurance agent titles and specifies that the rule does not prohibit the use of certain professional designations related to the business of insurance.

Proposed §21.4206(c) states that the following acts lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair regardless of location: using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid or misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

Proposed §21.4206(d) declares the following acts or practices relating to Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI) false, misleading, deceptive or unfair regardless of location: making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to SGLI or VGLI coverage which is false, misleading or deceptive; making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive; or suggesting a service member cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

Proposed §21.4206(e) declares the following acts or practices relating to disclosure false, misleading, deceptive or unfair regardless of location: using any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance agent, if that is the case, for the purpose of soliciting the purchase of life insurance; failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser; excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance; failing to make, at the time of sale or offer to an individual known to be a service member, certain written disclosures required by federal law to a service member; or failing to provide applicants with certain explanations and written documents when a sale of life insurance is conducted in-person face-to-face with a known service member.

Proposed §21.4206(f) declares the following acts or practices relating to the sale or solicitation of life insurance products to be false, misleading, deceptive or unfair: recommending the purchase of life insurance products that include a side fund to certain service members in certain lower pay grades under specific circumstances; offering or selling certain life insurance products to service members in certain lower pay grades unless specific needs assessment requirements are met; offering or selling any life insurance contract which fails to comply with Texas statutes governing nonforfeiture provisions; or selling a life insurance product containing a war or military exclusion to a known service member. The subsection describes the circumstances that must be satisfied to avoid a finding that certain sales are false, misleading, deceptive or unfair. Proposed §21.4207 provides that the remaining provisions of the rules remain valid if any provision is held to be invalid.

William O. Goodman, Special Litigation Counsel, Enforcement Division, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Goodman has determined that for each year of the first five years the proposal is in effect, the anticipated public benefits will be that active duty service members of the United States Armed Forces in Texas will be shielded from certain false, misleading, deceptive or unfair life insurance sales acts or practices previously targeted towards them. It is not anticipated that the proposed sections will result in any economic cost to the public. It is not anticipated that the proposed sections will result in any economic cost to insurers or insurance agents. It is not anticipated that the proposed sections will have an economic cost to small or micro-businesses. It is neither legal nor feasible to exempt small or micro-businesses or to waive compliance with the proposed rule considering the purpose of the proposal, which is to protect service members from certain false, misleading, deceptive or unfair life insurance sales acts or practices.

The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a taking impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 6, 2007, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A,

Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to William O. Goodman, Special Litigation Counsel, Enforcement Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk prior to the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The new sections are proposed under the Insurance Code §§541.001, 541.003, 541.401(a), 541.008 and 36.001. Section 541.401(a) authorizes the Commissioner to adopt and enforce reasonable rules the Commissioner determines necessary to accomplish the purposes of Chapter 541. Section 541.001 states that the purpose of Chapter 541 is to regulate trade practices in the business of insurance by defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices, and prohibiting those trade practices.

Section 541.003 prohibits trade practices defined in Chapter 541 or as determined under Chapter 541 to be unfair methods of competition or unfair or deceptive acts or practices in the business of insurance. Section 541.008 states that Chapter 541 shall be liberally construed and applied. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Chapter 541

§21.4201. Purpose.

The purpose of this subchapter is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified insurance sales practices to be false, misleading, deceptive or unfair.

§21.4202. Scope.

(a) This subchapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance agent to an active duty service member of the United States Armed Forces.

(b) This subchapter shall apply only to acts or practices committed on or after the effective date of this subchapter.

(c) This subchapter shall apply in addition to all other statutes and Texas Department of Insurance rules concerning the marketing and solicitation of insurance products, as well as statutes and Texas Department of Insurance rules concerning unfair or deceptive trade practices, and shall not be interpreted to limit those statutes and rules in any manner. The commissioner may discipline or enforce an action against an insurer or insurance agent under this subchapter in addition to any other statute or Texas Department of Insurance rule authorizing disciplinary or enforcement action.

§21.4203. Exemptions.

(a) This subchapter shall not apply to solicitations or sales involving:

(1) credit insurance;

(2) group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance agent or where the contract or certificate does not include a side fund;

(3) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;

(4) individual stand-alone health policies, including disability income policies;

(5) contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. §§1965 et seq.;

(6) life insurance contracts offered through or by a nonprofit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

(7) contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;

(C) a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(E) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(F) prearranged funeral contracts.

(b) Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 - PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

(c) For purposes of this subchapter, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance agent from this subchapter in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

§21.4204. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Active duty--Full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(2) Department of Defense (DoD) Personnel--All active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the U.S. Department of Defense.

(3) Door to door--A solicitation or sales method whereby an insurance agent proceeds randomly or selectively from household to household without prior specific appointment.

(4) General advertisement--An advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance agent.

(5) Insurer--An insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

(6) Insurance agent--A person required to be licensed under Chapter 4054, Insurance Code, and includes a person required to be licensed in accordance with §4054.051(7).

(7) Known or knowingly--Depending on its use in this subchapter, the insurance agent or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

(A) is a service member; or

(B) is a service member with a pay grade of E-4 or below.

(8) Life insurance--Insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

(9) Military installation--Any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(10) MyPay--A Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(11) Service member--Any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

(12) Side fund--A fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(A) accumulated value or cash value or secondary guarantees provided by a universal life policy;

(B) cash values provided by a whole life policy which are subject to the provisions of the Insurance Code Chapter 1105; or

(C) a premium deposit fund which:

(i) contains only premiums paid in advance which accumulate at interest;

(ii) imposes no penalty for withdrawal;

(iii) does not permit funding beyond future required premiums;

(iv) is not marketed or intended as an investment; and

(v) does not carry a commission, either paid or calculated.

(13) Specific appointment--A prearranged appointment agreed upon by both parties and definite as to place and time.

(14) United States Armed Forces--All components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

§21.4205. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation.

(a) The following acts or practices when committed on a military installation by an insurer or insurance agent with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

(1) knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;

(2) soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary;

(3) knowingly making appointments with or soliciting service members during their normally scheduled duty hours;

(4) making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;

(5) soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;

(6) posting unauthorized bulletins, notices or advertisements;

(7) failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885; or

(8) knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance agent constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(1) using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or

(2) using an insurance agent to participate in any United States Armed Forces sponsored education or orientation program.

§21.4206. Practices Declared Deceptive or Unfair Regardless of Location.

(a) The following acts or practices by an insurer or insurance agent constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(1) submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;

(2) knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(A) provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. §§4301 et seq. and the regulations promulgated thereunder; and

(B) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

(3) employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in §21.4206(a)(2);

(4) entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

(5) using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

(6) offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;

(7) knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; or

(8) advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(b) The following acts or practices by an insurer or insurance agent lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(1) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance agent or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance agent titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor." Nothing in this subchapter shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS).

(2) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance agent or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(c) The following acts or practices by an insurer or insurance agent lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

(1) using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

(2) excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(d) The following acts or practices by an insurer or insurance agent regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

(1) making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;

(2) making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive; or

(3) suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(e) The following acts or practices by an insurer and/or insurance agent regarding disclosure are declared to be false, misleading, deceptive or unfair:

(1) deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance agent, if that is the case, for the purpose of soliciting the purchase of life insurance;

(2) failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

(3) excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

(4) failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required

by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16; or

(5) excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(A) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

(B) either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of Chapter 21, Subchapter N of this title (relating to Life Insurance Illustrations), shall be deemed sufficient to meet this requirement for a written disclosure.

(f) The following acts or practices by an insurer or insurance agent with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

(1) excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

(2) offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(A) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents.

(B) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(3) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(A) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(B) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

(C) which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

(4) Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with the requirements of the Insurance Code Chapter 1105; or

(5) selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

§21.4207. Severability.

If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this subchapter shall remain in effect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2007.

TRD-200702595
Brenda Caldwell
Assistant General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.11

The Texas Parks and Wildlife Department proposes an amendment to §65.11, concerning Lawful Means. The proposed amendment would prescribe acceptable proof of legal blindness for the purposes of implementing the provisions of House Bill 308, enacted by the 80th Texas Legislature. House Bill 308 amended Parks and Wildlife Code, by adding §62.0055, which authorizes the use of laser sighting devices by hunters who are legally blind under the standards of Government Code, §62.104, provided the hunter is accompanied by a licensed hunter at least 13 years of age or older who is not legally blind. Under the terms of H.B. 308, the department is required to adopt rules to prescribe proof of legal blindness.

The proposed amendment would require a hunter who uses a laser sighting device to possess a signed statement from a physician attesting to the fact that the hunter is legally blind under the standards of Government Code, §62.105, which defines legal blindness as no more than 20/200 of visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest di-

ameter of the visual field subtends an angle no greater than 20 degrees.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the execution of the directives of the legislature and the provision of additional hunting opportunity.

There will be no adverse economic effect on small businesses, micro-businesses, or persons required to comply with the rule as proposed.

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to David Sinclair, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4854 (e-mail: david.sinclair@tpwd.state.tx.us).

The amendment is proposed under the authority of House Bill 308, 80th Texas Legislature (Regular Session) which amended Parks and Wildlife Code, Chapter 62, to require the department by rule to prescribe acceptable proof of legal blindness for the purposes of allowing legally blind hunters to use laser sighting devices.

The proposed amendment affects Parks and Wildlife Code, Chapter 62.

§65.11. Lawful Means.

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) Firearms.

(A) It is lawful to hunt alligators, game animals, and game birds with any legal firearm, including muzzleloading weapons, except as specifically restricted in this section.

(B) Special muzzleloader-only deer seasons are restricted to muzzleloading firearms only.

(C) It is unlawful to use rimfire ammunition to hunt alligator, deer, antelope, or desert bighorn sheep.

(D) It is unlawful to hunt alligators, game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(E) In Angelina, Brazoria, Calhoun, Chambers, Galveston, Hardin, Jackson, Jasper, Jefferson, Liberty, Matagorda, Nacogdoches, Newton, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, Trinity, Tyler and Victoria counties, alligators may not be hunted by means of firearms. In all other counties, alligators may by hunted by means of firearms on private property, including private waters, but may not be hunted by means of firearms from, on, in, across, or over public water.

(F) Alligators lawfully caught on a taking device may be dispatched by means of firearms in all counties.

(2) Archery.

(A) A person may hunt by means of lawful archery equipment during any open season; however, no person shall hunt deer by lawful archery equipment or crossbow during a special muzzleloader-only deer season.

(B) Arrows that are treated with poisons or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(C) While hunting turkey and all game animals other than squirrels by means of longbow, compound bow, or recurved bow:

(i) the bow must have a minimum peak draw weight of 40 pounds at the time of hunting; and

(ii) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. A mechanical broadhead must begin to open upon impact and when open must be a minimum of 7/8-inch in width.

(D) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during an archery-only season.

(E) Special archery-only seasons are restricted to lawful archery equipment only, except as provided in paragraph (3) of this section.

(3) Crossbow. Crossbows are lawful during any general open season. A person having an upper-limb disability may use a crossbow to hunt deer and turkey during an archery-only season, provided the person has in their immediate possession a physician's statement certifying the extent of the disability. When hunting turkey and all game animals other than squirrels by means of crossbow:

(A) the crossbow must have a minimum of 125 pounds of pull;

(B) the crossbow must have a mechanical safety;

(C) the crossbow stock must be not less than 25 inches in length; and

(D) the bolt must conform with paragraphs (2)(B) and (2)(C)(ii) of this section.

(4) Falconry. It is lawful to hunt any game bird or game animal by means of falconry under the provisions of Subchapter K of this chapter (relating to Raptor Proclamation).

(5) Alligator.

(A) Legal devices for taking alligators in the wild are as follows:

(i) hook and line (line set);

(ii) alligator gig;

(iii) lawful archery equipment and barbed arrow;

(iv) hand-held snare with integral locking mechanism; and

(v) lawful firearms, in counties where take by firearm is allowed.

(B) A line of at least 300-pound test shall be securely attached to all taking devices other than firearms used to hunt alligators. Except as provided in this subsection, hook-bearing lines must be attached to a stationary object capable of maintaining a portion of the line above water when an alligator is caught on the line. A line attached to an arrow, snare, or gig must have a float attached when used to take alligators. The float shall be no less than six inches by six inches by eight inches, or, if the float is spherical, no less than eight inches in diameter.

(C) Line-set provisions.

(i) Hook-bearing lines may not be set prior to the general open season and shall be removed no later than sunset of the last day of the open season.

(ii) From sunset to one-half hour before sunrise:

(I) no person shall use any taking device other than line sets to hunt alligators; and

(II) no person shall set any baited line capable of taking an alligator and no person shall remove alligators from line sets.

(iii) On a property for which the department has issued hide tags, no person shall set more than one line per unused hide tag in possession.

(iv) On a property that is not in a county listed in paragraph (1)(E) of this section and for which the department has not issued hide tags, no person shall set more than one line.

(v) Line sets shall be inspected daily, and alligators shall be killed, tagged or documented, and removed immediately upon discovery.

(vi) All line sets on properties for which hide tags have been issued shall be secured at one end on the tract of land specified for the hide tags. All other line sets shall be secured at one end on private property.

(vii) Each baited line shall be labeled with a plainly visible, permanent, and legibly marked gear tag that contains:

(I) the full name and current address of the person who set the line;

(II) the hunting license number of the person who set the line; and

(III) a valid hide tag number, if the line is set on a property for which hide tags have been issued.

(6) Use of laser sighting devices.

(A) A person who is legally blind may use a laser sighting device to hunt game animals and game birds during lawful hunting hours in open seasons, provided the person is assisted by a person who:

(i) is not legally blind;

(ii) has a hunting license; and

(iii) is at least 13 years of age.

(B) A person who uses a laser sighting device must have in possession a signed statement from a physician to the effect that the person is legally blind by the standard of Government Code, §62.104, and must present the statement to any peace officer or department employee acting within the scope of official duties.

(C) All provisions concerning hunter education requirements apply.

(7) [~~(6)~~] Special Provisions.

(A) Desert bighorn sheep. Except as provided in this paragraph, no motorized conveyance of any type shall be used to herd or harass desert bighorn sheep.

(B) Hunting by remote control. It is an offense for any person to hunt a wildlife resource by the means listed in this section if that person is not physically present and personally operating the means of take at the location where the hunting occurs during the time that the hunting occurs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2007.

TRD-200702596
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATE PROCUREMENT AND PROGRAM SUPPORT SERVICES OFFICE

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §20.1, §20.2

The Comptroller of Public Accounts proposes new §20.1, concerning purpose of the State Procurement and Support Services Office and new §20.2, concerning State Procurement and Support Services Office business location and mailing address.

House Bill 3560, transfers to the comptroller certain powers and duties of the Texas Building and Procurement Commission that do not primarily concern state facilities. Government Code, §2151.003(2) and §2151.004(d), transfer certain powers and duties of the Texas Building and Procurement Commission to the comptroller. Government Code, §2155.0011, transfers powers and duties under Government Code, Chapter 2155, to the comptroller and authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2155. Government Code, §2155.0012, require the comptroller to conduct a public hearing before adopting those rules.

The new sections are proposed under Texas Administrative Code, Title 34, Part 1, new Chapter 20: State Procurement and Support Services Office, Subchapter A: General Provisions, and related to the functions and responsibilities of that office, pursuant to House Bill 3560, 80th Legislature, 2007. House Bill 3560 is effective September 1, 2007.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, it would benefit the public by

consolidating certain state procurement and services within the comptroller, enhancing financial information about these activities. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule. There are no significant anticipated fiscal implications for small businesses.

Comments on the proposals may be submitted to Martin Cherry, General Counsel, General Counsel Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new sections are proposed under Government Code, §§2151.003, 2151.004, 2155.0011, and 2155.0012, which authorize the comptroller to adopt rules to efficiently and effectively administer these provisions.

The new sections implement Government Code, §§2155.003, 2151.004, 2155.0011, and 2155.0012.

§20.1. Purpose of the State Procurement and Support Services Office.

The State Procurement and Support Services Office is established within the Office of the Comptroller as a separate division and shall carry out the powers and duties transferred to the comptroller from the Texas Building and Procurement Commission and otherwise provided to the comptroller under House Bill 3560, 80th Legislature, 2007. These powers and duties include without limitation, statewide procurement, the historically underutilized business program, administrative support and offices for the State Council on Competitive Government, mail operations, printing and vehicle fleet management as provided in that legislation.

§20.2. State Procurement and Support Services Office Business Location and Mailing Address.

The business office of the State Procurement and Support Services Office is located in the Lyndon Baines Johnson (LBJ) State Office Building, 111 E. 17th Street, Suite 104, Austin, Texas 78774. The mailing address for the State Procurement and Support Services Office is: State Procurement and Support Services Office, Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702648
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 475-0387

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SUBCHAPTER G. CONTRACT PROCEDURES

34 TAC §§20.381 - 20.386

The Comptroller of Public Accounts proposes new §20.381, concerning purpose, new §20.382, concerning application, new §20.383, concerning open meetings for certain contract awards, new §20.384, concerning protests, new §20.385, concerning negotiation and mediation of contract disputes and new §20.386, concerning statewide procurement advisory council.

House Bill 3560, transfers to the comptroller certain powers and duties of the Texas Building and Procurement Commission that do not primarily concern state facilities. Government Code, §2151.003(2) and §2151.004(d), transfer certain powers and duties of the Texas Building and Procurement Commission to the comptroller. Government Code, §2155.0011, transfers powers and duties under, Government Code, Chapter 2155, to the comptroller and authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2155. Government Code, §2155.0012, requires the comptroller to conduct a public hearing before adopting those rules. Government Code, §2155.086, establishes procedures for awards of certain contracts by the chief clerk of the comptroller or the chief clerk's designee. Government Code, §2155.087, establishes the Statewide Procurement Advisory Council and requires the comptroller to adopt rules describing the purposes and tasks of the council as provided by Government Code, §2110.005, and Government Code, §2155.087(c), requires the comptroller to conduct a public hearing before adopting these rules.

These new sections are proposed under Texas Administrative Code, Title 34, Part 1, new Chapter 20: State Procurement and Support Services Office, Subchapter G: Contract Procedures, and relate to the powers and duties of the comptroller, pursuant to House Bill 3560, 80th Legislature, 2007, and housed by the comptroller in that office. House Bill 3560 is effective September 1, 2007.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, it would benefit the public by consolidating certain state procurement and services within the comptroller, enhancing financial information about these activities. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule. There are no significant anticipated fiscal implications for small businesses.

Comments on the proposals may be submitted to Martin Cherry, General Counsel, General Counsel Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new sections are proposed under Government Code, §§2151.003, 2151.004, 2155.0011, 2155.0012, 2155.086, 2155.087, and 2110.005, which authorize the comptroller to adopt rules to efficiently and effectively administer these provisions.

The new sections implement Government Code, §§2151.003, 2151.004, 2155.0011, and 2155.0012, 2155.086, 2155.087, and 2110.005.

§20.381. Purpose.

The purpose of this subchapter is to provide for the efficient and effective administration of the provisions of the Government Code relating to certain contract awards by the State Procurement and Support Services Office established in §20.1 of this title (relating to Purpose of the State Procurement and Support Services Office).

§20.382. Application.

Except as otherwise provided, this subchapter applies to the contracting and purchasing powers and duties of the State Procurement and Support Services Office established in §20.1 of this title (relating to Purpose of the State Procurement and Support Services Office)

§20.383. Open meetings for Certain Contract Awards.

(a) This section applies only to the award of a contract by the State Procurement and Support Services Office that:

(1) relates to the powers and duties transferred to the comptroller under Government Code, §2151.004(d);

(2) is reasonably expected by the State Procurement and Support Services Office at the time of the award to have a value of $100,000 or more over the life of the contract;

(3) is evaluated based wholly or partly on best value factors other than cost; and

(4) is a contract for which the solicitation of bids or proposals or similar expressions of interest is published on or after September 1, 2007.

(b) This section does not apply to:

(1) the award of a contract by the chief clerk on behalf of divisions of the comptroller other than the State Procurement and Support Services Office or for multiple divisions of the comptroller that also include the office that do not relate to the powers and duties transferred to the comptroller under Government Code, §2151.004(d);

(2) the award of a contract by the chief clerk that relate to the powers and duties of the comptroller to award such contracts prior to or notwithstanding the transfer of powers and duties of the comptroller under Government Code, §2151.004(d);

(3) the award of a contract by any state agency, local government or any other authorized entity under a statewide or master contract established by the State Procurement and Support Services Office, including without limitation, a state term contract or Texas multiple award schedule contract;

(4) any part of the contracting process other than the award, including without limitation planning, budgeting, solicitation, pre-response conference, respondent presentation, evaluation, development of staff or evaluation committee recommendations, negotiation, and signature;

(5) a renewal, extension, or amendment of a contract provided for in the written solicitation for the original contract; or

(6) an emergency purchase or other contract award for which delay would create a hazard to life, health, safety, welfare, or property or would cause undue additional cost to the state.

(c) As used in this section, the chief clerk of the comptroller includes the chief clerk or his or her designee.

(d) To award a contract to which this section applies, the chief clerk shall chair and conduct a public meeting to make the contract award.

(e) The chief clerk shall determine the time and location for the meeting. The meeting must comply with the applicable provisions of Government Code, Chapter 551, including requirements relating to posting notice of the meeting. The State Procurement and Support Services Office shall post notice of the meeting on the office's website and in the state business daily. The office of the attorney general shall advise the chief clerk and the office on the applicable provisions of Chapter 551 upon request.

(f) Before the open meeting, the chief clerk may review any written recommendations for the proposed contract award submitted by the staff of the State Procurement and Support Services Office or by an evaluation committee established by the office for the proposed contract. The chief clerk may discuss and review these written recommendations for proposed contract award with the staff or evaluation committee prior to the open meeting and may request that additional or clarifying written information be obtained for presentation in the public meeting. The chief clerk shall make the staff's or committee's final written recommendations available to the public at the meeting.

(g) A contract awarded by the chief clerk under this section is not considered final and does not bind the state until all negotiations are completed, if applicable, and all parties to the contract have signed the final contract.

(h) The State Procurement and Support Services Office shall post notice of a contract award made in an open meeting under this section on the office's website and in the state business daily.

(i) The State Procurement and Support Services Office shall post the text of a contract awarded in an open meeting under this section on the office's website and in the state business daily, except for information in a contract that is not subject to disclosure under Government Code, Chapter 552. Information that is not subject to disclosure under Chapter 552 shall be referenced in an appendix that generally describes the information without disclosing the specific content of the information.

§20.384. Protests.

(a) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise.

(1) Comptroller's office--The Office of the Comptroller of Public Accounts, an agency of the state.

(2) Chief clerk--deputy comptroller of the comptroller's office.

(3) Director of the office--director of the State Procurement and Support Services Office of the comptroller's office

(4) General counsel--general counsel of the comptroller's office.

(5) Interested parties--All vendors who have submitted bids, proposals or other expressions of interest for the provision of goods or services pursuant to a contract with the State Procurement and Support Services Office of the comptroller's office.

(6) Office--State Procurement and Support Services Office.

(7) Using agency--A state agency, governmental entity or other entity involved in the contract.

(b) Any actual or prospective bidder, offeror, or contractor who considers himself to have been aggrieved in connection with the office's solicitation, evaluation, or award of a contract may formally protest to the director of the office. Such protests must be made in writing and received by the director of the office within 10 working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. Formal protests must conform to the requirements of subsections (b) and (d) of this section, and shall be resolved through use of the procedures that are described in subsections (e) - (i) of this section. The protesting party must mail or deliver copies of the protest to the using agency and other interested parties.

(c) In the event of a timely protest under this section, the state shall not proceed further with the solicitation or award of the contract unless the chief clerk, after consultation with the director of the office and the using agency, makes a written determination that the contract must be awarded without delay, to protect the best interests of the state.

(d) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by the office that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the using agency and all other identifiable interested parties.

(e) The director of the office may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the general counsel. The director of the office may solicit written responses to the protest from other interested parties.

(f) If the protest is not resolved by mutual agreement, the director of the office shall issue a written determination that resolves the protest.

(1) If the director of the office determines that no violation of statutory or regulatory provisions has occurred, then the director of the office shall inform the protesting party, the using agency, and other interested parties by letter that sets forth the reasons for the determination.

(2) If the director of the office determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then the director of the office shall inform the protesting party, the using agency, and other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.

(3) If the director of the office determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then the director of the office shall inform the protesting party, the using agency, and other interested parties of that determination by letter that details the reasons for the determination. This letter may include an order that declares the contract void.

(g) The protesting party may appeal a determination of a protest by the director of the office to the general counsel. An appeal of the director's determination must be in writing and received in the office of the general counsel by not later than 10 working days after the date on which the director has sent written notice of his determination. The scope of the appeal shall be limited to review of the director's determination. The protesting party must mail or deliver to the using agency and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(h) The general counsel may refer the matter to the chief clerk for consideration or may issue a written decision that resolves the protest.

(i) The following requirements shall apply to a protest that the general counsel refers to the chief clerk.

(1) The general counsel shall deliver copies of the appeal and any responses by interested parties to the chief clerk.

(2) The chief clerk may consider any documents that agency staff or interested parties have submitted.

(3) The chief clerk shall issue a written letter of determination of the appeal to the parties which shall be final. In a subsequent open meeting conducted by the chief clerk under §20.383 of this title (relating to Open Meetings for Certain Contract Awards), the chief clerk shall inform the Statewide Procurement Advisory Council of any such recent determinations by the chief clerk on any contract awards made in any open meeting attended by the council.

(4) A protest or appeal that is not filed timely shall not be considered unless good cause for delay is shown or the chief clerk determines that an appeal raises issues that are significant to agency procurement practices or procedures in general.

(5) A written decision that either the chief clerk or the general counsel has issued shall be the final administrative action of the comptroller's office.

(j) The office shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the office's retention schedule.

§20.385. Negotiation and Mediation of Contract Disputes.

The negotiation and mediation of breach of contract claims asserted by contractors against the State Procurement and Support Services Office shall be governed by Chapter 1, Subchapter F of this title (relating to Negotiation and Mediation of Contract Disputes).

§20.386. Statewide Procurement Advisory Council.

(a) Purpose. The Statewide Procurement Advisory Council is established under Government Code, §2155.087. The purpose of the council is to make recommendations to and advise the chief clerk in open meetings conducted by the chief clerk under §20.383 of this title (relating to Open Meetings for Certain Contract Awards), to make certain contract awards for the State Procurement and Support Services Office.

(b) Duties. The Statewide Procurement Advisory Council shall assist and advise the chief clerk in open meetings conducted under §20.383 of this title. The council shall make recommendations in these open meetings on proposed procurements, recommendations designed to increase the cost savings, efficiency and other benefits to the state of consolidated state procurement through the State Procurement and Support Services Office.

(c) Manner of reporting. The Statewide Procurement Advisory Council shall report to the chief clerk in open meetings conducted under §20.383 of this title.

(d) Duration. The Statewide Procurement Advisory Council is abolished on September 1, 2011, unless Government Code, §2155.087, establishing the council, or similar legislation, is otherwise continued by the 82nd Legislature, 2011.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702649
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 475-0387

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SUBCHAPTER H. PURCHASE METHODS

34 TAC §20.391

The Comptroller of Public Accounts proposes new §20.391, concerning request for offers purchase method.

This new section is proposed under Texas Administrative Code, Title 34, Part 1, new Chapter 20: State Procurement and Support Services Office, Subchapter H: Purchase Methods, and relates to the functions and responsibilities of that Office, pursuant to House Bill 3560, 80th Legislature, 2007. House Bill 3560 is effective September 1, 2007. This new section is also proposed pursuant to House Bill 2918, 80th Legislature, 2007. House Bill 2918 is effective September 1, 2007.

House Bill 3560, transfers to the comptroller certain powers and duties of the Texas Building and Procurement Commission that do not primarily concern state facilities. Government Code, §2151.003(2) and §2151.004(d), transfer certain powers and duties of the Texas Building and Procurement Commission to the comptroller. Government Code, §2155.0011, transfers powers and duties under Chapter 2155, Government Code, to the comptroller and authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2155. Government Code, §2155.0012, requires the comptroller to conduct a public hearing before adopting those rules. Government Code, §2157.0011, transfers powers and duties under Government Code, Chapter 2157, to the comptroller and authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2157. Government Code, §2157.0012, requires the comptroller to conduct a public hearing before adopting those rules. Government Code, §2157.003, requires the commission, and therefore the comptroller due to the transfer of powers and duties, and state agencies to consider certain best value factors in determining the lowest overall cost for a purchase or lease of an automated information system.

House Bill 2918, amends certain provisions of the Government Code relating to state information technology procurement practices. Under that bill, amended Government Code, §2157.006, requires the Texas Building and Procurement Commission to adopt rules for designating best value purchasing methods for the state, including a request for offers method, under Government Code, §2157.006(c); since these duties and powers of the commission under Chapter 2157 were transferred to the comptroller, the comptroller is required to adopt these rules to designate best value purchase methods, including a request for offer method. Under that bill, the catalog purchase method is repealed.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, it would benefit the public by consolidating certain state procurement and services within the comptroller, enhancing financial information about these activities. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule. There are no significant anticipated fiscal implications for small businesses.

Comments on the proposal may be submitted to Martin Cherry, General Counsel, General Counsel Division, P.O. Box 13528, Austin, Texas 78711-3528.

This new section is proposed under Government Code, §§2151.003, 2151.004, 2155.0011, 2155.0012, 2157.003, 2157.006, 2157.0011, and 2157.0012, which authorize the comptroller to adopt rules to efficiently and effectively administer these provisions.

This new section implements Government Code, §§2155.003, 2151.004, 2155.0011, 2155.0012, 2157.003, 2157.006, 2157.0011, and 2157.0012.

§20.391. Request for Offers Purchase Method.

(a) This section designates the request for offers purchase method for automated information systems by the State Procurement and Support Services Office, other state agencies or local governments as provided in Government Code, §§2157.003, 2157.006(a)(2), 2157.006(b), and 2157.068(i). This section applies regardless of dollar value of the procurement. The request for offers purchase method in this section supersedes the catalog purchase method repealed by House Bill 2918, 80th Legislature, 2007.

(b) As provided in Government Code, §2157.006(a)(2) and §2157.068(i), the State Procurement and Support Services Office and other state agencies shall use the request for offers purchase method under this section. As provided in Government Code, §2157.006(b), local governments may use the request for offers purchase method under this section. In procuring under this method, procuring entities shall use the best value factors as provided in Government Code, §2157.003.

(c) The request for offers method is a direct purchase or lease method after the procuring entity's evaluation of written offers received in response to a published open and competitive solicitation in accordance with the solicitation to result in best value to the state. Under this request for offers method, the State Procurement and Support Services Office, other state agencies or local governments shall solicit, evaluate, select, negotiate as appropriate, and contract directly with one or more qualified vendors in accordance with the open and competitive solicitation. In procuring under this request for offers method, the procuring entity shall also comply with the Request for Offers provisions in the office's State of Texas Procurement Manual or similar statewide publication.

(d) Qualified vendors are those that meet the minimum requirements of the published request for offers and are qualified to provide the automated information system goods or services solicited. For this purpose, qualified vendors do not have to be listed on the centralized master bidders list or maintain any type of online catalog.

(e) To initiate this request for offers method, the State Procurement and Support Services Office, other state agencies or local governments shall publish a written, open and competitive request for offers in the state business daily in accordance with Government Code, §2155.083. The procuring entity shall comply with Government Code, §2155.083, regardless of dollar value of the procurement. If the office, other agencies or local governments believe that the solicited goods or services may be proprietary to one vendor under Government Code, §2155.067, that procuring entity shall include the following statement in the request for offers published in the state business daily: "The issuing office believes that the requested items in this request for offers may be proprietary to one vendor under Government Code, §2155.067; however, the issuing office strongly encourages offers from all qualified respondents that may be able to provide the requested items". The procuring entity shall include this statement in bold and prominent type at the beginning of the request for offers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702650
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 13. CONTROLLED SUBSTANCES
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §13.1, §13.9

The Texas Department of Public Safety proposes amendments to Chapter 13, §13.1 and §13.9, concerning General Provisions. The proposed amendment to §13.1 reformats the section in order to add new definitions for individual practitioner, institutional practitioner, and mid-level practitioner and deletes the definition for triplicate prescription form. The proposed amendment to §13.9 is necessary in order to correct the fax number for the Texas Prescription Program.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the proposed rule amendments are in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the proposed rule amendments are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these proposed rule amendments.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §481.003, is affected by this proposal.

§13.1. Chapter Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Controlled Substances Act (Texas Health and Safety Code, Chapter 481).

(2) Administer, abuse unit, adulterant or dilutant, agent, controlled premises, controlled substance, controlled substance analogue, deliver, delivery, designated agent, director, dispense, distribute, distributor, drug, drug paraphernalia, Federal Drug Enforcement Administration, hospital, institutional practitioner, lawful possession, manufacture, marihuana, medication order, narcotic drug, official prescription form, opiate, patient, person, pharmacist, pharmacist-in-charge, pharmacy, possession, practitioner, prescribe, prescription, principal place of business, and registrant--Have the meanings assigned those terms by the Act, §481.002.

(3) CSR--Controlled Substances Registration.

(4) Day--means a calendar day unless the context clearly indicates another meaning such as a business day.

(5) Department or DPS--The Texas Department of Public Safety.

(6) Drug Enforcement Administration or DEA--The Federal Drug Enforcement Administration.

(7) Individual practitioner--A physician, dentist, veterinarian, optometrist, podiatrist, or other individual licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

(8) [~~(7)~~] Inhalant paraphernalia--An item or other material defined as such by Texas Health and Safety Code, [~~§484.001 or~~]§485.001.

(9) Institutional practitioner--A hospital or other person (other than an individual) licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.

(10) [~~(8)~~] Laboratory apparatus--An item subject to Subchapter E of this chapter (relating to Precursors and Apparatus).

(11) [~~(9)~~] Licensed vocational nurse or LVN--An individual recognized as a licensed vocational nurse by the Texas Board of Vocational Nurse Examiners.

(12) [~~(10)~~] Long-term care facility or LTCF--An establishment licensed as such by the Texas Department of Aging and Disability [~~Human~~] Services.

(13) Mid-level practitioner--An individual practitioner, other than a physician, dentist, veterinarian, optometrist, or podiatrist, who is licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice. Examples of mid-level practitioners include, but are not limited to, health care providers such as advanced nurse practitioners and physician assistants who are authorized to dispense controlled substances.

(14) [~~(11)~~] Narcotic controlled substance--A narcotic drug or other controlled substance that contains opium or an opiate derivative.

(15) [~~(12)~~] Non-narcotic controlled substance--A controlled substance that does not contain opium or an opiate derivative.

(16) [~~(13)~~] PCLAS--The Precursor Chemical/Laboratory Apparatus Section.

(17) [~~(14)~~] Physician assistant--An individual licensed as such by the Texas State Board of Physician Assistant Examiners.

(18) [~~(15)~~] Precursor chemical--A substance subject to Subchapter E of this chapter (relating to Precursors and Apparatus).

(19) [~~(16)~~] Readily retrievable record--A record created and maintained by an automatic data processing or mechanized record keeping system so that a particular type of record can be separated from all other records in a reasonable time. The term includes a record created and maintained by annotation of each material item with an asterisk, redline, or some other manner visually identifiable apart from all other items appearing on the required record.

(20) [~~(17)~~] Record--A notification, order form, statement, invoice, prescription, inventory information, or other document for the acquisition or disposal of a controlled substance, precursor, or apparatus in any manner by a registrant or permit holder under a record keeping or inventory requirement of federal law, the Act, or this chapter.

(21) [~~(18)~~] Registered nurse--An individual recognized as such by the Texas Board of Nurse Examiners.

(22) [~~(19)~~] Schedule II--A list of narcotic and non-narcotic controlled substances found in the most current version of Schedule II as established or altered by the commissioner of health under the Act, Subchapter B, and published in the Texas Register.

~~[(20) Triplicate prescription form--A type of official prescription form.]~~

§13.9. Telephone Number and Address - Texas Prescription Program.

To inquire about information and administrative matters with, transmit to, or otherwise contact the Texas Prescription Program:

(1) the telephone number is: (512) 424-2189;

(2) the fax number is: (512) 424-5373 [~~424-5799~~];

(3) the Post Office Box mailing address is: Texas Prescription Program MSC 0439, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439;

(4) the fee or payment address is: Texas Prescription Program MSC 0439, Texas Department of Public Safety, P.O. Box 15999, Austin, Texas 78761-5999;

(5) the physical mailing address is: Texas Prescription Program MSC 0439, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78752-4422; and

(6) the e-mail address is through the department's web page at "www.txdps.state.tx.us" or directly through "tppcsr@txdps.state.tx.us."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER B. REGISTRATION

37 TAC §§13.21, 13.22, 13.24 - 13.30

The Texas Department of Public Safety proposes amendments to Chapter 13, §§13.21, 13.22, and 13.24 - 13.30, concerning Registration. Due to legislation from the 79th Regular Legislative Session in HB 164, regarding the distribution and retail sales of certain chemical substances, Texas Health and Safety Code, §481.077, was modified and Texas Health and Safety Code, §481.0771, was created. Based on the changes to the law, it is necessary to propose revisions and additional clarification of current rules for permitting and reporting the distribution and sales of certain chemical substances. Some changes have been made to reflect recent changes made to federal regulations and to accommodate current business processes. Additional non-substantive changes have also been included to improve clarity throughout the chapter. In addition, several sections have been reformatted to include the addition of mid-level practitioner to the list of groups that must register and to add rules about separation from delegating physician, the return of unexpired certificates, and compliance measures.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the proposed rule amendments are in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the proposed rule amendments are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for small businesses or micro-businesses. The anticipated cost to individuals who are required to comply with the section as proposed is the $25.00 non-refundable processing fee required for an original or renewal registration.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these proposed rule amendments.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §481.003, is affected by this proposal.

§13.21. Who Must Register.

(a) Required by Act. A person, who is required by the Act to register in order to manufacture, distribute, prescribe, possess, analyze, dispense, or conduct research with a controlled substance, must obtain an annual registration from the director (CSR Section).

(b) Generally. Only a person actually engaged in an activity covered by the registration provisions of the Act must obtain a registration. A related or affiliated person who is not engaged in a covered activity is not required to register.

(c) Activities. The director may register a person for one or more of the following categories of business activity:

(1) practitioner;

(2) pharmacy;

(3) hospital;

(4) manufacturer;

(5) researcher;

(6) teaching institution;

(7) distributor;

(8) analyst or analytical lab; [~~or~~]

(9) peyote distributor; or[~~.~~]

(10) mid-level practitioner.

(d) Schedules. The director may register a person for one or more of the following schedules:

(1) Schedule I;

(2) Schedule II (narcotic);

(3) Schedule II (non-narcotic);

(4) Schedule III (narcotic);

(5) Schedule III (non-narcotic);

(6) Schedule IV; or

(7) Schedule V.

(e) Lawful possession. A registrant may lawfully possess a controlled substance to the extent authorized by the registration.

(f) An applicant may apply for registration as a manufacturer, researcher, teaching institution, distributor, analyst, or analytical laboratory only after obtaining the appropriate registration from DEA.

§13.22. Registration for Certain Activities.

(a) Schedule I.

(1) A person who is seeking registration to conduct research with a Schedule I controlled substance must comply with the Act, §481.065(b) and submit a research protocol to the director for approval. Under this subsection, the person may submit a duplicate of a protocol submitted to DEA for the same research authority. Once submitted, the protocol becomes a part of the application for all purposes. If approved by the director, the person may conduct research only:

(A) [~~(1)~~] in the manner expressly detailed in the protocol; and

(B) [~~(2)~~] using a controlled substance expressly specified in the protocol.

(2) [~~(b)~~] Without DEA registration. If the director determines registration is appropriate to minimize a risk of diversion or abuse of a controlled substance, the director may register a person who:

(A) [~~(1)~~] has not applied for registration with DEA; or

(B) [~~(2)~~] is not a registrant with DEA.

(b) Schedules II - V.

(1) A person who is seeking registration to possess, prescribe or dispense a Schedule II - V controlled substance must comply with the Act, §481.061.

(2) A provider pharmacy of a long term care facility must comply with the Texas Pharmacy Act and rules.

§13.24. Exemption from Registration.

A person is exempt from registration, need not register, and may lawfully possess a controlled substance under the Act if the person is:

(1) exempted from registration under the Act, §481.062;

(2) excepted from the Act, Subchapter C, under the Act, §481.0621; or

(3) exempted from federal registration under the Code of Federal Regulations, Title 21, Chapter II, §§1301.22 - 1301.24 [~~§§1301.22 - 1301.25~~].

§13.25. Application.

(a) Required. A person required to register under this subchapter must comply with this subchapter and Subchapter F of this chapter (relating to Applications).

(b) Form. An applicant must make:

(1) a new or original application on DPS Form NAR-77 or NAR-77a; and

(2) a renewal application on DPS Form NAR-78 or NAR-78a.

(c) Rejection. An applicant, who seeks to renew a registration, may correct a rejected or defective application and resubmit it for filing at any time before termination under §13.30 of this title (relating to Termination).

§13.26. Certificate.

(a) Issuance. The director will issue a certificate of registration to an applicant who qualifies for registration or renewal under the applicable provisions of the Act, Subchapter C, and this subchapter.

(b) NAR-79. The director will issue a [~~the~~] certificate to a registrant listed in §13.21(c)(1) - (9) of this title (relating to Who Must Register) on DPS Form NAR-79, containing:

(1) the registrant's name and address;

(2) the registration number;

(3) the business activity authorized by the registration;

(4) each schedule the registrant is authorized to handle;

(5) a "[~~fee~~] paid" or "exempt" notation;

(6) a "duplicate" notation, if the certificate is a duplicate;

(7) the certificate's issue date; and

(8) the certificate's expiration date.

(c) NAR-79a. The director will issue a certificate to a mid-level practitioner on DPS Form NAR-79a, containing:

(1) the information listed in §13.26(b) of this title (relating to Certificate); and

(2) the name of the supervising physician delegating prescriptive authority.

(d) [~~(c)~~] Display. The registrant must:

(1) display the certificate at the physical location of the registrant's principal place of business; or

(2) maintain the certificate so the registrant may promptly retrieve and display it at any time upon proper demand.

§13.27. Fee.

(a) Amount. To apply for an original or renewal registration to manufacture, distribute, prescribe, possess, analyze, dispense, or conduct research with a controlled substance, the applicant must pay a non-refundable processing [~~registration~~] fee of $25.

(b) Submission. An applicant must submit the fee with the original or renewal application to the director (CSR Section).

(c) Acceptable manner. The applicant must make payment in the form of a check or money order, payable to the "Texas Department of Public Safety," or another form of payment authorized by a general rule or policy of the department.

(d) Prohibited manner. The director will not accept a fee payment in the form of:

(1) stamps;

(2) foreign currency;

(3) a check or money order, payable in foreign currency; or

(4) a third-party endorsed check.

(e) Multiple or additional fees. The director:

(1) may charge multiple fees for registrations to one person at each different location and for each different business activity; and

(2) will not charge an additional fee for each different schedule processed on a single registration application.

§13.28. Fee Exemption.

(a) Requirements. The director may exempt a person from payment of a state fee for registration or renewal, if the person's superior certifies on the DPS Form NAR-77, NAR-77a, [~~or~~] NAR-78, or NAR-78a that the person is exempted from payment of a fee under the Code of Federal Regulations, Title 21, Chapter II, §1301.21 and is registered in Texas.

(b) Effect. Exemption from payment of a new registration or renewal fee:

(1) authorizes the registrant, where applicable, to acquire, possess, or handle a controlled substance only at the exempt location; and

(2) does not relieve the registrant of another requirement or duty prescribed by law.

§13.29. Expiration.

(a) Annual. Except as provided by subsection (c) of this section, an original certificate of registration expires after one year from the month of issuance indicated on the original certificate.

(b) Effect of modification or renewal. Except as provided by subsection (c) of this section, a modification in registration or an early renewal does not affect a current or future date of expiration.

(c) Extension. The director may extend the expiration date of a registration for a period of less than 12 additional months, if the director determines the extension is necessary to evenly allocate the expiration dates of all certificates.

(d) Effect of expiration. After expiration, the former registration provides the registrant with no authority to manufacture, distribute, prescribe, possess, analyze, dispense, or conduct research with a controlled substance.

(e) Renewal of expired number [~~Grace period~~]. After expiration under this section, a former registrant may apply for a new registration. During a six-month [~~grace~~] period after expiration and before termination under §13.30(a)(1) of this title (relating to Termination), the director (CSR Section) may reserve the original registration number in the name of the original applicant.

§13.30. Termination.

(a) When. A registration terminates:

(1) at the end of [~~a grace period of~~]six months [~~allowed by the director~~] after expiration [~~under this subchapter~~];

(2) when a regulatory board or DEA accepts a voluntary surrender, or denies, suspends, or revokes a license or a federal controlled substance registration; or

(3) when the person dies, ceases legal existence, or discontinues business or professional practice.

(b) New registration required. After termination, a former registrant must apply for a new registration and may be issued a different registration number.

(c) Effect of termination. After termination, the former registration provides the registrant with no authority to manufacture, distribute, prescribe, possess, analyze, dispense, or conduct research with a controlled substance.

(d) Discontinued activity. On the day a registrant discontinues business or professional practice, the registrant or a representative of the registrant must notify the director (CSR Section) by close of business. The director may immediately terminate the registration of a person reported to the director under this subsection.

(e) Mid-level practitioner. Upon dissolution of a professional relationship between a mid-level practitioner and the delegating physician, the mid-level practitioner has no authority to distribute, prescribe, possess, or dispense a controlled substance. If the mid-level practitioner does not have a new delegating physician certifying delegation within 60 days after the dissolution of such relationship, the director may terminate the registration of the mid-level practitioner.

(f) Return certificate. A registrant must return a terminated certificate within 30 days after termination if the certificate is not expired.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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SUBCHAPTER D. OFFICIAL PRESCRIPTIONS

37 TAC §§13.73, 13.78, 13.81, 13.82, 13.84

The Texas Department of Public Safety proposes amendments to Chapter 13, §§13.73, 13.78, 13.81, 13.82, and 13.84, concerning Official Prescriptions. Due to legislation from the 79th Regular Legislative Session in HB 164, regarding the distribution and retail sales of certain chemical substances, Texas Health and Safety Code, §481.077 was modified and Texas Health and Safety Code, §481.0771 was created. Based on the changes to the law, it is necessary to propose revisions and additional clarification of current rules for permitting and reporting the distribution and sales of certain chemical substances. Some changes have been made to reflect recent changes made to federal regulations and to accommodate current business processes. Additional non-substantive changes have also been included to improve clarity throughout the chapter. Further amendments delete

instructions for use of triplicate prescription forms and specify minimum monthly prescription thresholds.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §481.003 is affected by this proposal.

§13.73. Form.

(a) Use. A practitioner may issue a prescription for a Schedule II controlled substance only on an official Texas prescription form, which includes single or multiple copy forms. This subsection also applies to a prescription issued in an emergency situation.

(b) Refills prohibited. A Schedule II prescription may not be refilled.

(c) Completion. A practitioner who prescribes any quantity of a Schedule II controlled substance must complete an official prescription form by legibly filling in the spaces provided.

(d) Other requirements. A practitioner:

(1) may not postdate an official prescription; and

(2) must ensure all information on the prescription is legible on all copies, including stamped or preprinted instructions.

~~[(e) Triplicate prescription. When a practitioner uses a triplicate prescription to prescribe a Schedule II controlled substance to a patient in a non-emergency situation, the practitioner must detach Copy 1 and Copy 2 without separation and give both copies to the patient to take to the pharmacy for filling.]~~

§13.78. Waiver from Electronic Reporting.

(a) Minimum prescription threshold. If a pharmacy fills less than 15 [~~a small number of reportable~~] prescriptions per month, the pharmacy may request from the director a waiver from electronic reporting. If a waiver is granted, the pharmacy must file reportable prescriptions with the director on a form approved under §13.79(c) of this title (relating to Pharmacy Responsibility - Non-electronic Reporting).

(b) Inadequate technology. If a pharmacy is not automated or cannot meet the requirements in §13.77 of this title (relating to Electronic Compatibility), the pharmacy may request from the director a waiver from electronic reporting. The request must clearly describe the technological inadequacies in the pharmacy.

(c) Written request. The waiver must be requested annually in writing.

(d) Duration. If granted, the waiver will remain in effect for no longer than twelve months, beginning the first day of the month following the month the waiver was granted.

§13.81. Pharmacy Responsibility- Questionable Prescription.

If a dispensing pharmacist receives an official prescription form that creates a substantial question or doubt in the mind of the dispensing pharmacist, the pharmacist must, before filling the prescription, communicate with [~~the patient or~~] the prescribing practitioner in order to resolve the question or doubt.

§13.82. Pharmacy Responsibility- Out-of-State Practitioner.

(a) If a pharmacist in this state receives a prescription, that is not on an official prescription form, that is for a Schedule II controlled substance, and that is issued by a practitioner in another state, the pharmacy may fill the prescription if:

(1) the practitioner is authorized by the other state to prescribe the substance;

(2) the pharmacy has a plan approved by and on file with the director allowing the activity; and

(3) the pharmacy processes and submits the prescription according to the reporting requirements approved in the plan.

(b) The approval of the plan will run concurrently with the pharmacy's registration.

§13.84. Release of Non-statistical Information.

(a) To whom. The director may release Texas Prescription Program information obtained under the Act, §481.075 only to an individual listed in the Act, §481.076(a).

(b) Purpose. An individual described by subsection (a) of this section may only request information for a purpose listed in the Act, §481.076.

(c) Written request. The director may require an individual seeking information under this section to submit a written request to the director before the director releases to the individual the information contained on or derived from the prescription.

(d) Proper need and Return of Information report. The director will require a person requesting information under the Act, §481.076(a)(3), to show a proper need for the information. The showing of proper need is ongoing. The director will [~~may~~] require the person to periodically submit to the director a Return of Information report documenting use of the information and the status of the investigation or prosecution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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SUBCHAPTER E. PRECURSORS AND APPARATUS

37 TAC §§13.101, 13.103, 13.104, 13.107 - 13.117

The Texas Department of Public Safety proposes amendments to Chapter 13, §§13.101, 13.103, 13.104, 13.107 - 13.110 and new §§13.111 - 13.117, concerning Precursors And Apparatus. Due to legislation from the 79th Regular Legislative Session in HB 164, regarding the distribution and retail of certain chemical substances, Texas Health and Safety Code, §481.077 was modified and Texas Health and Safety Code, §481.0771 was created. Based on the changes to law, it is necessary to propose revisions and additional clarification of current rules for permitting and reporting the distribution and sales of certain chemical substances. Additional non-substantive changes have also been included to improve clarity, and to streamline and clarify procedures and terminology throughout the chapter.

New §13.111 is necessary in order to identify excluded substances, while new §13.112 is necessary in order to identify new statutory requirements for the reporting of ephedrine, pseudoephedrine, and norpseudoephedrine wholesales, including a provision for the reporting of suspicious quantity orders. Current §§13.112 - 13.116 are simultaneously being repealed and proposed as new §§13.113 - 13.117.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments and new sections are proposed pursuant to Texas Health and Safety Code, §§481.003, 481.077, 481.0771, and 481.080, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §§481.003, 481.077, 481.0771, and 481.080 are affected by this proposal.

§13.101. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Annual permit--A permit issued to a person by the director under this subchapter authorizing the person to receive or deliver a precursor or apparatus for one year from the date of issue or renewal.

(2) Apparatus--An item of chemical laboratory equipment covered by this subchapter, that is designed, made, or adapted to manufacture a controlled substance or a controlled substance analogue. This [~~The~~] term:

(A) does not include any item expressly deleted from the list of apparatus in §13.116 [~~§13.115~~] of this title (relating to Additions or Deletions) after being determined by the director to no longer jeopardize public health and welfare by evidenced proliferation or use in clandestine laboratories or other illicit manufacturer of a controlled substance or controlled substance analogue; and

(B) includes, except as provided by subparagraph (A) of this paragraph:

(i) any item listed under the Act, §481.080(a); and

(ii) any additional items expressly named to the list in §13.116 [~~§13.115~~] of this title (relating to Additions or Deletions) after being determined by the director to jeopardize public health and welfare by evidenced proliferation or use in clandestine laboratories or other illicit manufacturer of a controlled substance or controlled substance analogue.

(3) Clandestine laboratory--An illicit chemical laboratory or similar operation consisting of a sufficient combination of precursor and apparatus items used or usable in the illicit manufacture or synthesis of a controlled substance or a controlled substance analogue.

(4) Deliver--To sell, transfer, or otherwise furnish a precursor or apparatus. The term includes taking an order to furnish a precursor or apparatus.

(5) Distributor--A manufacturer, wholesaler, broker, repacker, jobber, association, corporation, partnership [~~retailer~~], or a person who sells, transfers, or otherwise furnishes a precursor or apparatus.

(6) - (11) (No change.)

(12) Precursor or chemical precursor--A chemical substance item covered by this subchapter and commonly used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(A) The term includes:

(i) a chemical precursor listed under the Act, §481.002(51); and

(ii) any additional items expressly named to the list in §13.116 [~~§13.115~~] of this title (relating to Additions or Deletions) after being determined by the director to jeopardize public health and welfare by evidenced proliferation or use in clandestine laboratories or other illicit manufacturer of a controlled substance or controlled substance analogue.

(B) The term does not include:

(i) any item expressly deleted from the list of precursors in §13.116 [~~§13.115~~] of this title (relating to Additions and Deletions) after being determined by the director to no longer jeopardize public health and welfare by evidenced proliferation or use in clandestine laboratories or other illicit manufacturer of a controlled substance or controlled substance analogue; or

(ii) an immediate precursor under §13.117 [~~§13.116~~] of this title (relating to Immediate Precursor List).

(13) Recipient--A person who receives, orders, or otherwise seeks to receive a precursor or apparatus, whether through purchase, lease, loan, gift, or other transfer.

(14) Waiting period--The 21-day period required before a person may lawfully receive or deliver a precursor or apparatus under the Act, §481.077(f) or §481.080(g) [~~§481.080(h)~~].

(15) Immediate precursor--A chemical substance item listed in §13.117 [~~§13.116~~] of this title (relating to Immediate Precursor List).

(16) Wholesale distributor--A distributor who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer.

(17) Suspicious quantity order--The circumstances of the sale or transfer of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine would lead a reasonable person to believe the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance due to any of the following:

(A) the method of payment;

(B) the method of requested delivery;

(C) the amount greatly exceeds previous orders;

(D) the amount exceeds the threshold as set by the United States Drug Enforcement Administration; or

(E) any other circumstance that the wholesale distributor determines to be suspicious.

§13.103. Permit Exception.

The director declares by rule a person to be excepted from the permit requirements with respect to a precursor or apparatus covered by this subchapter, if the person:

(1) is excepted from the permit requirements under the Act, §481.0621 or §481.077(l);

(2) is a controlled substances registrant under the authority of the Act, §481.077(c) or §481.080(d) [~~§481.080(e)~~];

(3) - (10) (No change.)

§13.104. Requirements for Permit Issuance.

(a) One time. The director will issue a one-time permit to distribute or receive a stated precursor or apparatus to a person who:

(1) - (4) (No change.)

(5) delivers to the director an appropriate written consent described in §13.237 of this title (relating to Inspection of Permit Holder and Pseudoephedrine Records and Reports).

(b) - (c) (No change.)

§13.107. Business Letter of Authorization.

(a) Permit alternative. In lieu of a permit authorizing immediate distribution, a legitimately established business may receive a precursor or apparatus from a distributor within this state after a 21-day waiting period by presenting or providing to the distributor a letter of authorization from the business.

(b) Contents. A letter of authorization from a business recipient must include:

(1) the information required under the Act, §481.077(d)(2)(A) or §481.080(e)(2)(A) [~~§481.080(f)(2)(A)~~];

(2) the precursor or apparatus sought;

(3) the name of business issuing the letter;

(4) the issue date of the letter;

(5) the mailing and physical address, including the number and street name, city, state, and zip code; and

(6) the signature of the individual executing the letter on behalf of the business.

(c) - (d) (No change.)

(e) Expiration. A letter of authorization expires one year from the date [~~day~~] of issue.

(f) Retention. The distributor must retain the original letter of authorization on file and forward a copy of the letter, along with a [~~proposed~~] NAR-22 or other communication adequately detailing the proposed transaction, to the director (PCLAS). Until expiration, a distributor may use the original for future distributions. The recipient must issue a new letter:

(1) after the letter expires; or

(2) if material information required in the original letter changes.

§13.108. Waiting Period.

(a) - (b) (No change.)

(c) Permit alternative. A valid one-time or annual permit allows a distributor to complete the transaction before the required 21-day waiting period has elapsed, if:

(1) the prospective recipient presents proper identification to the distributor under §13.110 of this title (relating to NAR-22); and

(2) the permit contains no apparent alterations, if it is a one-time permit; or

(3) the recipient furnishes to the distributor the permit number, if it is an annual permit.

(d) (No change.)

§13.109. Reporting Distribution.

(a) Generally. Except as provided by this section, a distributor must use a NAR-22 to report to the director (PCLAS) each incident in which the distributor delivers a precursor or apparatus to a person located inside this state. A distributor, who is located in this state and who delivers a precursor or apparatus to a person located inside this state, must report the transaction to the director (PCLAS), whether or not the recipient holds a permit issued under this subchapter.

(b) Business without permit. A distributor, who seeks to deliver a precursor or apparatus to a legitimately established business, that does not have a permit and is not excepted from the permit requirements of the Act or this subchapter, must report the proposed transfer to the director. The report must include a copy of the letter of authorization, along with a [~~proposed~~] NAR-22 or other communication adequately detailing the proposed transaction, and must be transmitted to the director (PCLAS). The distributor may lawfully deliver the item only after observing the 21-day waiting period under §13.108 of this title (relating to Waiting Period).

(c) - (i) (No change.)

§13.110. NAR-22.

(a) Generally. The NAR-22 contains information required from a distributor to describe the relevant details of the transaction, including information about a recipient of a precursor or apparatus.

(b) Format. The distributor must complete all applicable sections of the NAR-22 [~~in the manner described by the current copy of the DPS Pamphlet NAR-11d, that has been published by the director and made available to the public through the PCLAS~~].

(c) - (j) (No change.)

§13.111. Exclusion.

This subchapter does not apply to the sale or transfer of any compound, mixture, or preparation containing ephedrine, pseudoephedrine, or norpseudoephedrine that is in liquid, liquid capsule, or liquid gel capsule form and is:

(1) mixed or combined with another noncontrolled chemical or substance in the manufacture of a substance;

(2) used for a legitimate purpose; and

(3) only reclaimable through a distillation or extraction process.

§13.112. Ephedrine, Pseudoephedrine, and Norpseudoephedrine.

(a) Generally. A wholesale distributor who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall obtain before delivering the product:

(1) the retailer's business name, address, area code, and telephone number;

(2) the name of the person making the purchase;

(3) the amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine ordered; and

(4) any other information that may be required by the director.

(b) Record. A wholesale distributor shall make an accurate and legible record of the information in subsection (a) of this section and the amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine actually delivered. A wholesale distributor shall retain the record for a period of at least two years after the date of the transaction. The record shall be made available to the director upon request.

(c) Suspicious Quantity Report. Not later than 10 business days after the receipt of an order for a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that requests delivery of a suspicious quantity of that product, a wholesale distributor shall submit a NAR-91B (Report of Theft, Loss or Suspicious Order of Precursor Chemical/Laboratory Apparatus) to the director as a report of the suspicious order. The NAR-91B is available on the department website at www.txdps.state.tx.us.

(d) Failure to Report. A wholesale distributor who, with reckless disregard for the duty to report, fails to report as required by subsection (c) of this section shall be subject to disciplinary action to include:

(1) denial, suspension, or revocation of any permit or registration issued by the department;

(2) notification to the Texas Department of State Health Services; and

(3) notification to the United States Drug Enforcement Administration.

§13.113. Out-of-State Activity.

(a) Distributor. Except as required by this section, a distributor who is located outside this state may distribute without complying with this subchapter. A distributor who is located in this state must meet:

(1) the permit requirements of §13.102 of this title (relating to Who Must Obtain Permit); and

(2) the reporting requirements of §13.109 of this title (relating to Reporting Distribution).

(b) Recipient. If the recipient is located outside this state at the time of order and at the time of receipt, this subchapter does not apply and the distributor need not require a permit or a letter of authorization from the recipient.

§13.114. Security, Record Keeping, Inventory, Inspection, and Reporting Discrepancy, Loss, Theft, or Diversion.

A distributor, wholesale distributor, or recipient must comply with the applicable provisions of:

(1) Subchapter H of this chapter (relating to Security);

(2) Subchapter I of this chapter (relating to Record Keeping);

(3) Subchapter J of this chapter (relating to Inventory);

(4) Subchapter K of this chapter (relating to Inspection); and

(5) Subchapter L of this chapter (relating to Reporting Discrepancy, Loss, Theft, or Diversion).

§13.115. Communication with Director (PCLAS).

If a person is required or allowed by this subchapter to make a notification, report, or other written, telephonic, or personal communication to the director, the person must make the communication to the director through the PCLAS at the address indicated in §13.10 of this title (relating to Telephone Number and Address - Precursor Chemical/Laboratory Apparatus Section).

§13.116. Additions or Deletions.

(a) Generally. Under the authority of the Act, §481.077(b) and §481.080(c), the director may determine a precursor or apparatus should be added to or deleted from the precursor or apparatus lists.

(b) Precursor additions. The director has determined:

(1) each chemical precursor substance listed in this subsection does jeopardize public health and welfare and is proliferating or being used in clandestine laboratories or other illicit manufacture of a controlled substance or controlled substance analogue; and

(2) each of the following items are named to the list of chemical precursor substances subject to the Act, §481.077(b): red phosphorus and hypophosphorous acid.

(c) Precursor deletions. The director has determined:

(1) each chemical precursor substance listed in this subsection does not jeopardize public health and welfare and is not proliferating or being used in clandestine laboratories or other illicit manufacture of a controlled substance or controlled substance analogue; and

(2) each of the following items are deleted from the list of chemical precursor substances subject to the Act, §481.077(b): (none).

(d) Apparatus additions. The director has determined:

(1) each item of chemical laboratory apparatus listed in this subsection does jeopardize public health and welfare and is proliferating or being used in clandestine laboratories or other illicit manufacture of a controlled substance or controlled substance analogue; and

(2) each of the following items are named to the list of items of chemical laboratory apparatus subject to the Act, §481.080(a): (none).

(e) Apparatus deletions. The director has determined:

(1) each item of chemical laboratory apparatus listed in this subsection does not jeopardize public health and welfare and is not proliferating or being used in clandestine laboratories or other illicit manufacture of a controlled substance or controlled substance analogue; and

(2) each of the following items are deleted from the list of items of chemical laboratory apparatus subject to the Act, §481.080(a): (none).

§13.117. Immediate Precursor List.

The following substances are designated as being an immediate precursor as provided under the Act, §481.002(22):

(1) Benzaldehyde;

(2) Gamma-Butyrolactone (other names include: GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; gamma-hydroxybutyric acid lactone);

(3) Isosafrole;

(4) 3,4-Methylenedioxyphenyl-2propanone;

(5) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers;

(6) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers;

(7) Piperonal;

(8) Safrole; and

(9) Lithium metal removed from a battery and immersed in kerosene, mineral spirits, or similar liquid that prevents or retards hydration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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37 TAC §§13.111 - 13.116

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §§13.111 - 13.116, concerning Precursors and Apparatus. Due to legislation from the 79th Regular Legislative Session in HB 164 regarding the distribution and retail of certain chemical substances, Texas Health and Safety Code, §481.077, was modified and Texas Health and Safety Code, §481.0771, was created. Based on the changes to law, it is necessary to propose revisions and additional clarification of current rules for permitting and reporting the distribution and sales of certain chemical substances. Therefore, it is necessary to repeal the current sections and simultaneously file new renumbered sections.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the proposed repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the repeals may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The repeals are proposed pursuant to Texas Health and Safety Code, §§481.003, 481.077, and 481.0771, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §§481.003, 481.077, and 481.0771 are affected by this proposal.

§13.111. Mixed Precursor.

§13.112. Out-of-State Activity.

§13.113. Security, Record Keeping, Inventory, Inspection, and Reporting Discrepancy, Loss, Theft, or Diversion.

§13.114. Communication with Director (PCLAS).

§13.115. Additions or Deletions.

§13.116. Immediate Precursor List.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. APPLICATION

37 TAC §§13.131 - 13.133, 13.137

The Texas Department of Public Safety proposes amendments to Chapter 13, §§13.131 - 13.133, and 13.137, concerning Controlled Substances Application. Due to legislation from the 79th Regular Legislative Session in HB 164, regarding the distribution and retail of certain chemical substances, Texas Health and Safety Code, §481.077 was modified and Texas Health and Safety Code, §481.0771 was created. Based on the changes to law, it is necessary to propose revisions and additional clarification of current rules for permitting and reporting the distribution and sales of certain chemical substances. Additional non-substantive changes have also been included

to improve clarity, and to streamline and clarify procedures and terminology throughout the chapter.

Additional amendments to §13.132 are necessary in order to outline additional application requirements for mid-level practitioners, while additional amendments to §13.137 outline modification requirements for mid-level practitioners.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §§481.003, 481.077, 481.0771, and 481.080, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §§481.003, 481.077, 481.0771, and 481.080 are affected by this proposal.

§13.131. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Registrant--A person who holds a registration or permit covered by this chapter.

(2) Registration--A registration issued under this chapter, including a general controlled substances registration, [~~or~~] a specific peyote distributor registration, or [~~and~~] a precursor or apparatus permit issued under this chapter.

§13.132. Application Requirements.

(a) - (f) (No change.)

(g) Mid-level practitioners.

(1) each mid-level practitioner must have a supervisory physician delegating prescriptive authority as required by the Act, §481.002(39)(D). Each physician must certify the authorizing delegation on the mid-level practitioner's application and include the physician's:

(A) name;

(B) Texas Medical Board license number;

(C) DPS registration number;

(D) signature; and

(E) date of signature.

(2) Effect of signature. A physician who signs a mid-level practitioner's application as the supervising physician assumes responsibility for ensuring that the mid-level practitioner practices under the laws of this state related to controlled substances prescribing activities. A physician who fails to properly monitor the mid-level practitioner's activities is subject to disciplinary action.

(3) Registration and License Status. A supervising physician must have an unrestricted and active DPS registration and Texas Medical Board license number.

(4) Change of Delegating Physician.

(A) A change of delegating physician must be submitted in writing as required in §13.208 of this title (relating to Requirements to Update Information).

(B) A delegating physician shall notify the director in writing to terminate delegation with a mid-level practitioner.

(5) Limitations. The physician is limited to the extent and number of mid-level practitioners that the physician delegated as outlined in Chapter 157, Occupations Code.

§13.133. Application Form and Content.

(a) - (b) (No change.)

(c) Renewal. The director will mail a form for an application for renewal to a registrant approximately 60 days before the expiration date of the registration to the address currently on file with the appropriate section of the Narcotics Service.

(d) - (e) (No change.)

§13.137. Modification.

(a) Availability. A registrant may apply to the director through the appropriate section of the Narcotics Service for registration modification to:

(1) authorize the addition or deletion of a schedule, precursor, or apparatus;

(2) change any information on the name line of the registration; [~~or~~]

(3) correct, at the discretion of the director, other information on the registration certificate or permit document; or[~~.~~]

(4) change a supervising physician delegating prescriptive authority to include the physician's:

(A) name;

(B) Texas Medical Board license number;

(C) DPS registration number;

(D) signature; and

(E) date of signature.

(b) Written request. A person must notify the director in writing of the modification sought, including the signature of the registrant or other person who is authorized to sign an original application under §13.132(d) or (e) of this title (relating to Application Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Director
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SUBCHAPTER G. FORFEITURE AND DESTRUCTION

37 TAC §13.155, §13.158

The Texas Department of Public Safety proposes amendments to Chapter 13, §13.155 and §13.158, concerning Forfeiture And Destruction. The proposed amendment to §13.155 deletes reference to repealed Chapter 484, Texas Health and Safety Code. The proposed amendment to §13.158(a)(3) updates the state agency name.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the proposed rule amendments are in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the proposed rule amendments are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher or Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §481.003, is affected by this proposal.

§13.155. Destruction Authority- Other Item.

(a) Destruction with or without court order. A laboratory, law enforcement agency, or peace officer may destroy certain miscellaneous items covered by this section:

(1) with a court order under the authority of that order; or

(2) without a court order under the authority of one of the summary destruction provisions of the Texas Health and Safety Code, Chapters 482 - 485.

(b) Statutory sources. A laboratory, law enforcement agency, or peace officer may destroy without a court order:

(1) a simulated controlled substance under the authority of the Texas Health and Safety Code, §482.004; or

(2) [~~a volatile chemical or related inhalant paraphernalia under the authority of the Texas Health and Safety Code, §484.007; or~~]

[~~(3)~~] an abusable volatile chemical [~~glue, aerosol paint,~~] or [~~related~~] inhalant paraphernalia under the authority of the Texas Health and Safety Code, §485.037 [~~§485.038~~].

(c) Dangerous drug. At the direction of the Texas State Board of Pharmacy, a law enforcement agency or peace officer may destroy without a court order a dangerous drug under the authority of the Texas Health and Safety Code, §483.074.

(d) Subchapter applies. The documentation and security provisions of this subchapter apply to destruction of a miscellaneous item under this section, except where provided otherwise in a court order of destruction.

§13.158. Manner of Destruction- Security Control.

(a) Destruction by anyone. A person may accomplish routine destruction of an item under this subchapter by burning in a suitable incinerator or by another method as long as the person performs the destruction in:

(1) a safe and responsible manner;

(2) compliance with all relevant federal, state, and local laws; and

(3) compliance with all requirements of the Texas [~~Natural Resources Conservation~~] Commission on Environmental Quality and the EPA.

(b) Private contract. If a laboratory, law enforcement agency, or peace officer contracts with a private entity to destroy the item, the private contractor must:

(1) hold a controlled substances registration number from the director and DEA; and

(2) obtain full permitting from the EPA as a hazardous waste transportation, storage, or disposal facility, as appropriate.

(c) Destruction by officer. The director recommends but does not require that an individual peace officer should not destroy hazardous material, unless that officer possesses the special expertise required to handle the material safely and lawfully.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. SECURITY

37 TAC §§13.184 - 13.186

The Texas Department of Public Safety (department) proposes amendments to Chapter 13, §§13.184 - 13.186, concerning Security. Proposed amendments to §13.184 are necessary in order to correct a grammatical error in subsection (a)(4) and to correct a reference to statute. Proposed amendments to §13.185 are

necessary in order to state an additional prohibited act regarding the Official Prescription Form and specify allowable forms and criteria for faxed forms. The proposed amendment to §13.186 is necessary in order to update a statutory reference in subsection (a)(1).

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the proposed rule amendments are in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the proposed rule amendments are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these proposed rule amendments.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §481.003, is affected by this proposal.

§13.184. Registrant's Employee.

(a) Disqualification. A registrant may not intentionally, knowingly, or recklessly employ or use in any manner an individual who will or is reasonably likely to have access to a controlled substance and who:

(1) has had a federal or state application for controlled substances registration denied, revoked, canceled, or suspended;

(2) has been convicted of a felony offense under a state or federal law;

(3) does not comply with a federal security control for a practitioner under the Code of Federal Regulations, Title 21, Chapter II, §1301.76;

(4) does not meet a federal employee screening standard for a non-practitioner under [~~of~~] the Code of Federal Regulations, Title 21, Chapter II, §§1301.90 - 1301.93 [~~§§1301.90 - 301.93~~]; or

(5) has had a license revoked, canceled, or suspended by a state health regulatory agency.

(b) Disqualification waived. After considering the registrant's written request, the director may allow the registrant to employ an individual who has violated subsection (a) of this section. The director may not waive the requirements that a registrant not hire an individual during the two-year period immediately following the individual's conviction for a felony offense under state or federal law or until the terms of a sentence are satisfied, whichever is the longer period of time.

(c) Factors. Before making a waiver decision, the director may consider each relevant factor, including, but not limited to, the following:

(1) if the individual is a convicted felon, the suspension of sentence, placement of the individual on probation, and the successful completion by the individual of a court-ordered supervision;

(2) whether the health regulatory agency has reinstated or reissued the previously revoked, canceled, or suspended license of the individual; and

(3) whether the employment of that individual by a registrant is in the best interest of the public and the individual.

§13.185. Official Prescription Form.

(a) Accountability. A practitioner who obtains from the director an official prescription form is accountable for each numbered form.

(b) Prohibited acts. A practitioner may not:

(1) allow another practitioner to use the individual practitioner's official prescription form;

(2) pre-sign an official prescription blank; [~~or~~]

(3) post-date an official prescription; or

(4) [~~(3)~~] leave an official prescription blank in a location where the practitioner should reasonably believe another could steal or misuse a prescription.

(c) While not in use. While an official prescription blank is not in immediate use, a practitioner may not maintain or store the book at a location so the book is easily accessible for theft or other misuse.

(d) Voided. A practitioner must account for each voided official prescription form by sending the voided form to the director (Texas Prescription Program).

(e) Types of forms. Forms may be single or multiple copy forms as provided by the department.

(f) Faxed forms. Faxed official prescription forms will be accounted for as in the Act, §481.074(o).

§13.186. Precursor or Laboratory Apparatus.

(a) Required unless one-time permit. A distributor or recipient of a precursor or apparatus must comply with this subsection:

(1) unless the person is exempted or excepted from similar security requirements by this chapter or the Act, §481.077(k) or §481.080(l) [~~§481.080(m)~~] as a one-time permit holder; or

(2) even though the person is exempted or excepted as described in paragraph (1) of this subsection, the person has voluntarily submitted to annual permitting under this chapter.

(b) Storage requirements. A business, distributor, or individual who holds a precursor chemical or laboratory apparatus permit will meet the following minimum security requirements to protect these controlled items. The permit holder will:

(1) establish and maintain a building, an enclosure within a building, or an enclosed yard that provides reasonably adequate security against the diversion of a controlled item;

(2) limit access to each storage area to the minimum number of individuals or employees necessary for the permit holder's activities; and

(3) designate an individual or a reasonably limited set of individuals with:

(A) responsibility for each area where a controlled item is stored; and

(B) authority to enter or control entry into the area.

(c) No physical barrier. In the absence of a physical barrier, such as a wall, partition, fence, or similar divider, the permit holder may comply with this section by another form of substantially increased security to limit physical access to the storage area under subsection (b)(2) of this section.

(d) Written designation. The permit holder will make the designation required by subsection (b)(3) of this section in writing and will make the designation available upon request in the same manner as a record kept under this chapter. The holder may update the designation record as necessary to reflect current practice.

(e) Observation. When maintenance personnel or a business guest, visitor, or similar individual is present in or passes through, an area covered by this section, the permit holder must provide for reasonably adequate observation of the area by an employee specifically designated under subsection (b)(3) of this section.

(f) Alarm system. If a permit holder has an alarm system that is in operation and being monitored, the permit holder must immediately report each unauthorized intrusion or other security breach to:

(1) a local law enforcement agency; or

(2) the director (PCLAS).

(g) No risk of diversion. A permit holder is not required to make the alarm report required under subsection (f) of this section, if there is a clearly innocent or other reasonable explanation for the security breach that does not involve a potential of diversion.

(h) Limited risk of diversion. The director may waive a security requirement of this section if a permit holder or applicant demonstrates that business procedures or other circumstances impose a more strict security requirement that indicates a significantly limited risk of diversion.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. RECORD KEEPING

37 TAC §§13.205 - 13.208

The Texas Department of Public Safety proposes amendments to Chapter 13, §§13.205 - 13.208, concerning Record Keeping. Amendments to the sections are necessary in order to correct grammatical errors, to improve clarity and to include additional requirements to update information.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act; and §481.080(l), which provides that a person covered by this subsection shall maintain records and inventories in accordance with rules established by the director.

Texas Health and Safety Code, §481.003 and §481.080, are affected by this proposal.

§13.205. Practitioner's Designated Agent.

(a) - (d) (No change.)

(e) List provided. When a practitioner adds an individual to or deletes an individual from the list, the practitioner must provide upon request the current list to a pharmacy or pharmacist, the director, a member of the department, or an investigator listed in the Act, §481.076(a)(1).

§13.206. Precursor/Apparatus Records.

(a) Required unless one-time permit. A distributor or recipient of a precursor or apparatus must maintain records under this section:

(1) unless the person is exempted or excepted from reporting by this chapter or the Act, §481.077(k) or §481.080(l) [~~§481.080(m)~~] as a one-time permit holder; or

(2) even though the person is exempted or excepted as described in paragraph (1) of this subsection, the person has voluntarily submitted to annual permitting under this chapter.

(b) Distributor. A distributor of a precursor or apparatus must:

(1) make an accurate and legible record of a distribution; and

(2) maintain the record after the date of the transaction.

(c) NAR-22. Copy 2 of a properly completed DPS Form NAR-22 meets the record keeping requirement of this section while it remains in the distributor's record booklet [~~Proper completion of the DPS Form NAR-22 automatically generates the record of distribution on its Copy 2, that meets the record keeping requirement under this section while it remains in the distributor's record booklet~~].

(d) - (g) (No change.)

§13.207. Record Retention Period.

(a) Two years, generally. Except as otherwise provided by law or this chapter, a record required to be made or kept by the Act or this chapter must be kept, maintained, and made available for inspection or copying for a period of two years.

(b) Beginning date. The two-year period described by this section commences on the later date of the day:

(1) the record was required to be created;

(2) the record was actually created; or

(3) the prescription was last filled [~~refilled~~].

§13.208. Requirement to Update Information.

A person, who is an applicant for or holder of a registration or annual permit from the director, must notify the director through the appropriate section of the Narcotics Service before the seventh day after any change in the person's business name, address, physician delegating prescriptive authority, and telephone number or other information required on the application, registration, or permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

TRD-200702565
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER J. INVENTORY

37 TAC §13.223

The Texas Department of Public Safety proposes an amendment to Chapter 13, §13.223, concerning Inventory. An amendment to §13.223 is necessary in order to correct a statutory reference.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendment is proposed pursuant to Texas Health and Safety Code, §481.003 and §481.080, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §481.003 and §481.080 are affected by this proposal.

§13.223. Precursor/Apparatus Inventory.

(a) Required unless one-time permit. A distributor or recipient of a precursor or apparatus must establish and maintain an inventory under this section:

(1) unless the person is exempted or excepted from inventory requirements by this chapter or the Act, §481.077(k) or §481.080(l) [~~§481.080(m)~~] as a one-time permit holder; or

(2) even though the person is exempted or excepted as described in paragraph (1) of this subsection, the person has voluntarily submitted to annual permitting under this chapter.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

TRD-200702566
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER K. INSPECTION

37 TAC §13.233, §13.237

The Texas Department of Public Safety proposes amendments to Chapter 13, §13.233 and §13.237, concerning Inspection. Amendment to §13.233 includes a non-substantive grammatical change and is necessary in order to improve clarity to the section. Amendments to §13.237 are necessary in order to change the name of the section and add new subsection (d) listing the requirements for records and reports of purchases and sales of ephedrine, pseudoephedrine, and norpseudoephedrine.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in

the *Texas Register.* For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §§481.003, 481.077, 481.0771, and 481.080, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §§481.003, 481.077, 481.0771, and 481.080, are affected by this proposal.

§13.233. Who May Inspect.

(a) Generally. This subchapter applies to the director's authority under the Act to enter and inspect [~~a~~] controlled premises [~~premise~~]. While engaged in the inspection or an activity reasonably related to the inspection, the director may examine, audit, inventory, or, as appropriate, copy an item or record found on the premises.

(b) Delegation. The director delegates authority described in subsection (a) of this section to each member of the department who is assigned to the Narcotics Service, whether or not the member is a commissioned peace officer.

(c) Assistance. When exercising an authority described in subsections (a) or (b) of this section, the director or member may be assisted by:

(1) a peace officer;

(2) another member of the department;

(3) a member of DEA;

(4) an investigator listed in the Act, §481.076(a)(1);

(5) a representative of an appropriate state health regulatory agency governing the conduct of a registrant; or

(6) another individual acting under the authority of the director or member.

§13.237. Inspection of Permit Holder and Pseudoephedrine Records and Reports.

(a) Generally. The holder of a [~~one-time~~] permit for distribution or receipt of a chemical precursor or laboratory apparatus may be inspected subject to the limitations of the Act, §481.077(k), [~~and~~] §481.080(l) [~~481.080(m)~~] and §13.104 of this title (relating to Requirements for Permit Issuance).

(b) Consent to inspect - one-time. An applicant for a one-time permit must give written consent for one or more pre-permit inspections under this subchapter to determine eligibility for issuance of the permit. A written consent to an inspection under the Act, §481.078(e) or §481.081(e), is sufficient for a one-time permit if the consent is for initial inspection or any additional inspection to be conducted before issuance of the permit and at a reasonable time as necessary to determine qualification for the permit.

(c) Consent to inspect - annual. A written consent given by a person seeking an annual permit must include consent for an initial inspection to determine qualification for the permit sought and additional inspections conducted before or after issuance of the permit at a reasonable time as necessary to enforce the Act or this chapter.

(d) Pseudoephedrine Records and Reports.

(1) Generally. A wholesale distributor who distributes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall make available for immediate inspection to any member of the department during regular business hours upon presentation of proper credentials all files, papers, processes, controls, or facilities appropriate for verification of a required record or report. If the wholesaler is no longer in operation or closed, the records shall be made available within three (3) business days.

(2) Delegation. The director delegates authority described in this section to each member of the department who is assigned to the Narcotics Service, whether or not the member is a commissioned peace officer.

(3) Assistance. When exercising the authority in this section, a member of the department may be assisted by:

(A) a peace officer;

(B) another member of the department;

(C) a member of DEA;

(D) a representative of an appropriate state health regulatory agency governing the conduct of a wholesaler; or

(E) another individual acting under the authority of the director or member.

(e) [~~(d)~~] Statutory authority. A member of the department or peace officer is expressly authorized by the Act, §481.077(k) and §481.080(l) [~~481.080(m)~~], to audit, inspect, and copy a record of a purchase or sale of a precursor or apparatus of a person who holds an annual permit under Subchapter E of this chapter (relating to Precursors and Apparatus). Except as provided by subsection (b) of this section, this section does not apply to a person who holds a one-time permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

TRD-200702567
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER L. REPORTING DISCREPANCY, LOSS, THEFT, OR DIVERSION

37 TAC §13.252, §13.253

The Texas Department of Public Safety proposes amendments to Chapter 13, §13.252 and §13.253, concerning Reporting, Discrepancy, Loss, Theft, or Diversion. Amendments to the sections include non-substantive grammatical changes and are necessary in order to improve clarity to the sections.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the

department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register.* For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §481.003 is affected by this proposal.

§13.252. Applicability.

(a) Discrepancy [~~To discrepancy~~], loss, theft, or other potential diversion. Without regard to actual evidence of diversion, this subchapter applies to a discrepancy, loss, or theft of a controlled or other regulated item or substance or other situation involving a potential for diversion.

(b) Who must report. This subchapter applies to a person who is:

(1) a registrant under Subchapter B of this chapter (relating to Registration);

(2) a registered peyote distributor under Subchapter C of this chapter (relating to Peyote); or

(3) a precursor or apparatus permit holder under Subchapter E of this chapter (relating to Precursors and Apparatus), whether it is a one-time or annual permit.

§13.253. Reporting Discrepancy, Loss, Theft, or Other Potential Diversion.

(a) Generally. A person covered by this subchapter must notify the director not later than the third day after the date the person learns of:

(1) a discrepancy in the amount of an item ordered from a source inside or outside this state and the amount received, if not back ordered;

(2) a loss or theft during shipment from a source inside or outside this state; or

(3) a loss or theft from current inventory.

(b) How made. A person covered by this subchapter must notify the director by submitting a report to the director through the appropriate section of the Narcotics Service. The report must be made on:

(1) a DPS Form NAR-91, for a registrant under Subchapter B of this chapter (relating to Registration) or Subchapter C of this chapter (relating to Peyote);

(2) a DPS Form NAR-91B, for a precursor or apparatus permit holder under Subchapter E of this chapter (relating to Precursors and Apparatus); or

(3) a duplicate of the equivalent DEA form for reporting a theft or loss of a controlled substance to DEA.

(c) Form and content. A person making a report under this section must:

(1) make the report on regular business letterhead or other reporting form; and

(2) ensure the report contains the following information:

(A) the name, address, and telephone number of the business or other person preparing the report;

(B) the printed or typed name of the individual preparing the report; and

(C) the date the person prepares the report.

(d) Additional content. If the report under this section is of:

(1) a discrepancy, it must include:

(A) the name of the item ordered;

(B) the difference in the amount actually received; and

(C) the amount shipped according to the shipping statement or invoice.[~~; or~~]

(2) a loss or theft from current inventory, it must include:

(A) the name and amount of the item lost or stolen;

(B) the physical location where the loss or theft occurred; and

(C) the date of discovery of the loss or theft.[~~; or~~]

(3) a discrepancy, loss, theft, or other potential diversion that occurred during shipment of the item, it must include:

(A) the name of the common carrier or person who transported the item; and

(B) the date the item was shipped.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

TRD-200702568
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER M. DENIAL, REVOCATION, AND RELATED DISCIPLINARY ACTION

37 TAC §13.271, §13.272

The Texas Department of Public Safety proposes amendments to Chapter 13, §13.271 and §13.272, concerning Denial, Revocation, And Related Disciplinary Action. Amendments to the section include non-substantive grammatical changes and are necessary in order to improve clarity to the section.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulatory Programs, MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433; or by electronic mail to johnny.hatcher@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Johnny Hatcher at (512) 424-2458.

The amendments are proposed pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the Texas Controlled Substances Act.

Texas Health and Safety Code, §481.003 is affected by this proposal.

§13.271. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) APA--The [~~the~~] Administrative Procedure Act (Texas Government Code, Chapter 2001).

(2) Applicant--Person [~~person~~] who applies for a registration or permit.

(3) Denial--Includes an action to deny an application for an original or renewal of a registration or permit.

(4) Disciplinary action--An action taken under this subchapter to accept a voluntary surrender or to reprimand, cancel, suspend, probate, revoke, or demonstrate expiration or termination of a current or former registration.

(5) Registrant--A person who holds a current or former registration or permit.

(6) Registration--A controlled substances registration, including a peyote distributor registration or a precursor or apparatus permit issued under this chapter.

(7) Serious misdemeanor--A Class A misdemeanor, a Class B misdemeanor, or another criminal offense punishable under the laws of this state, another state, or the United States by:

(A) confinement in a county jail or analogous penal institution; or

(B) a term of confinement of one year or less, if the jurisdiction does not differentiate between the location of felony or misdemeanor confinement.

§13.272. General Provisions.

(a) APA applies. Except as provided by this chapter, the APA applies if the director proposes to take disciplinary action against a person's registration or to deny a person's application for registration.

(1) The person is entitled to preliminary notice from the director and a hearing as a contested case under the APA.

(2) The director will send notice by certified mail or personal delivery [~~personally delivered~~] to the most current address of the registrant or applicant contained in the director's files. If mailed, the notice is presumed to have been received by the registrant or applicant on the third business day after the date of mailing.

(b) Pleadings. If the director pleads appropriately:

(1) the director may take a disciplinary action or make a denial under this subchapter against a chemical precursor or laboratory apparatus permit in the same manner as a disciplinary action or denial against a controlled substances registration; and

(2) a successful disciplinary action or denial by the director will also operate against any other registration issued by the director under this chapter.

(c) Action may be limited. The director may limit a disciplinary action or denial to the particular activity, schedule, controlled substance within a schedule, precursor, apparatus, or other item for which grounds for the action exist [~~exists~~].

(d) Notification of another agency. The director will promptly notify each appropriate federal or state health regulatory agency of an order taking a disciplinary action or denial against a registration or application, other than a permit issued under Subchapter E of this chapter (relating to Precursors and Apparatus).

(e) Invalidation. A registration may:

(1) expire or terminate;

(2) be canceled, surrendered, suspended, revoked, or otherwise invalidated; or

(3) be subject to reprimand or probation.

(f) Possession. Mere possession of the physical document does not necessarily mean that the person:

(1) still holds a current, valid registration; or

(2) currently holds, has ever held, or has any of the powers or rights indicated on the document.

(g) Hearing, evidence and procedure. Except as provided by this chapter, a hearing will be governed by the APA and will be held by an administrative law judge appointed by the State Office of Administrative Hearings. A hearing will be conducted in accordance with the procedures contained in Chapter 29 of this title (relating to Practice and Procedure), and the rules of the State Office of Administrative Hearings.

(h) Under the Act, §481.063(h), the APA does not apply to a denial, suspension, or revocation of an application for registration if the denial is based on a denial or other disciplinary action taken by DEA under the Federal Controlled Substances Act.

(i) Request for Hearing. An applicant or registrant may request a hearing under this subchapter by submitting a timely and properly addressed written request for a hearing to the director. To be timely, the request must be received by the director no later than fifteen calendar days after the date of the registrant's or applicant's receipt of the notice of denial or other disciplinary action. To be properly addressed, a request for hearing must be mailed or sent by e-mail or facsimile to the director at the return address included in the director's notice of denial or other disciplinary action or, if none, to the director at the address of the Narcotics Service indicated in §13.7 of this title (relating to Telephone Number and Address - Narcotics Service).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2007.

TRD-200702569

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 424-2135

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PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, by amending §221.13. Subsections (a) - (c) are amended to require TDD/TTY training within the previous six months to qualify for basic, intermediate, or advanced proficiency certificates. Subsection (d) is amended to reflect the effective date for these changes.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed amendments.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the hearing impaired public by ensuring that all emergency telecommunication operators are in compliance with mandated TDD/TTY requirements as set out in federal regulations, allowing individuals to meet or exceed the minimum standards established by the Commission to receive this proficiency certificate. Since proposed changes to this rule are the result of current required training, there is no increase in costs to affected agencies.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Suite 200, Austin, Texas 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with the Texas Occupations Code, §1701.404, Telecommunicators.

No other code, article, or statute is affected by this proposal.

§221.13. Emergency Telecommunications Proficiency.

(a) To qualify for a basic telecommunications proficiency certificate, an applicant must meet all proficiency requirements:

(1) successful completion of a 40-hour course developed or approved by the commission;

(2) successful completion of a departmental field training course;

(3) successful completion of TDD/TTY training within the last six (6) months; and

(4) [~~(3)~~] one year of experience in public safety telecommunications.

(b) To qualify for an intermediate telecommunications proficiency certificate, an applicant must meet all proficiency requirements including:

(1) basic telecommunications certification;

(2) at least two years experience in public safety telecommunications;

(3) 120 hours of training; and

(4) successful completion of TDD/TTY training within the last six (6) months; and

(5) [~~(4)~~] if the basic telecommunications certificate was issued or qualified for on or after January 1, 2000, successful completion of required courses as specified by the commission, which include:

(A) Cultural Diversity;

(B) Ethics for Law Enforcement;

(C) Crisis Communications;

(D) TCIC/NCIC for Full Access Operators; NLETS/TLETS; or Criminal Law; and

(E) Spanish for Law Enforcement.

(c) To qualify for an advanced telecommunications proficiency certificate, an applicant must meet all proficiency requirements including:

(1) intermediate telecommunications certificate;

(2) at least four years experience in public safety telecommunications; and

(3) 240 training hours; and[~~,~~]

(4) successful completion on TDD/TTY training within the last six (6) months.

(d) The effective date of this section is December 1, 2007. [~~June 1, 2004.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 19, 2007

TRD-200702527
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: August 5, 2007
For further information, please call: (512) 936-7717

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

1 TAC §355.8441

The Texas Health and Human Services Commission (HHSC) withdraws the proposed amendments to §358.8441 which appeared in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2435).

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702608
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: June 25, 2007
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER S. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.190 - 19.198

On March 6, 2007, a mated female Mexican fruit fly was detected in a McPhail trap located on a sour orange tree at the Laredo Community College campus, Webb County, Texas. Consequently, the Texas Department of Agriculture (the department) adopted on an emergency basis a Mexican fruit fly quarantine to prevent spread of this pest into other areas of Texas and to facilitate eradication. That quarantine was published as Title 4, Texas Administrative Code, §§19.190 - 19.198, in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1817). As of June 16, 2007, no additional Mexican fruit flies were detected for a time period equal to three consecutive generations of this pest after the initial detection on March 6, 2007. Consequently, the Mexican fruit fly eradication criterion established in §19.191 of the Mexican fruit fly quarantine has been met; and the department has lifted the quarantine from that part of Webb County described in §19.192(a)(2) of the quarantine as a quarantined infested area. Furthermore, the department does not intend to adopt this quarantine on a permanent basis. For more information, please call Dr. Shashank Nilakhe, State Entomologist, at (512) 463-1145.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702577
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: June 21, 2007
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §21.2105

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §21.2105 which appeared in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2964).

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702642
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 25, 2007
For further information, please call: (512) 427-6114

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19 TAC §21.2109, §21.2110

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §21.2109 and §21.2110 which

appeared in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2966).

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702643
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 25, 2007
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANTS AND SCHOLARSHIP PROGRAMS

SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.228, §22.230

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §22.228 and §22.230 which appeared in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3095).

Filed with the Office of the Secretary of State on June 25, 2007.

TRD-200702632
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 25, 2007
For further information, please call: (512) 427-6114

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

The Commissioner of Insurance adopts amendments to §5.4010 and new §5.4011 concerning building code specifications in the plan of operation of the Texas Windstorm Insurance Association (Association) for structures to be eligible for windstorm and hail insurance coverage through the Association, and adopts amendments to §5.4603 which adopts by reference the forms to be used for windstorm inspections to determine compliance with applicable building code requirements in the plan of operation of the Association. The sections are adopted with changes to the proposed text published in the January 5, 2007, issue of the *Texas Register* (32 TexReg 28).

The adopted amendments to §5.4010(a) are necessary to specify that the 2003 Editions of the International Residential Code (IRC) and the International Building Code (IBC), each with 2003 Texas Revisions, are applicable within the catastrophe area until January 1, 2008 for structures to be eligible for windstorm and hail insurance coverage through the Association. The IRC specifies building code standards for residential structures, and the IBC specifies building code standards for other structures, including commercial buildings and government buildings. The 2006 Editions of the IRC and the IBC, each as revised by 2006 Texas Revisions, are adopted by reference in new §5.4011, to be effective for structures constructed, repaired, or to which additions are made on or after January 1, 2008 for such structures to be eligible for windstorm and hail insurance coverage through the Association.

The proposal published in the January 5, 2007, issue of the *Texas Register* referenced Article 21.49 of the Insurance Code and the applicable sections and subsections of that article. The nonsubstantive revision of Article 21.49 enacted by the 79th Legislature in HB 2017 became effective April 1, 2007, and therefore, all statutory references in the proposal have been changed to the new revised Insurance Code references in this adoption order. Sections 2210.004 (formerly Article 21.49 §3(f)) and 2210.251 (formerly Article 21.49 §6A(a)) of the Insurance Code require that all structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the Commissioner for compliance with the building specifications in the plan of operation. Section 2210.153 (formerly Article 21.49 §5(c)) of the Insurance Code authorizes the amendment of the Association's plan of operation, and §2210.251 (formerly Article 21.49 §6A(a)) of the Insurance Code provides that after January 1, 2004, for geographic areas specified by the Commissioner, the Commissioner by rule shall adopt the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council and by rule may adopt a subsequent edition of that code and any supplements published by the International Code Council (ICC) and amendments to the code. Section 2210.252 (formerly Article 21.49 §5(m)) of the Insurance Code provides that the Commissioner by rule may supplement the Association's plan of operation building specifications with the structural provisions of the IRC, and by rule may adopt a subsequent edition of the IRC and a supplement published by the ICC or an amendment to that code.

The adoption of the 2006 Editions of the IRC and the IBC, each as revised by the 2006 Texas Revisions, was recommended on July 12, 2006, by the Advisory Committee on Building Code Specifications and Maintenance (Advisory Committee) pursuant to §2210.307 (formerly Article 21.49 §6C) of the Insurance Code, with the exception of a change in the scope of the area to which a new §R325 of the 2006 Edition of the IRC, which was added to the IRC as a Texas Revision, and a new §1716 of the 2006 Edition of the IBC, which was added to the IBC as a Texas Revision, apply.

Both §R325 and §1716 set standards for corrosion resistant fasteners and metal connectors. The Advisory Committee recommended that these two standards be used for structures, including all open structural spaces and vented or enclosed areas and heated and cooled living spaces, in those designated catastrophe areas seaward of the Intracoastal Canal and catastrophe areas inland of the Intracoastal Canal and within 25 miles of the Texas coastline, but not for structures located in catastrophe areas inland and west of the specified boundary line in the designated catastrophe areas. New §5.4011 applies §R325 and §1716 to all open spaces of structures located inland and west of the specified boundary line in the designated catastrophe areas in addition to applying to the areas recommended by the Advisory Committee. Structural open areas include porches, decks, carports, exterior wall coverings, roof coverings, metal ties for stone and masonry veneer, the underside of elevated structures, anchors for securing mechanical equipment, garage door attachments, roof vent attachments, skylight attachments, and impact protective systems (shutters). Therefore, the new section provides standards for corrosion resistant fasteners and metal connectors used in all open areas of structures located in designated catastrophe areas, but does not require corrosion resistant fasteners in vented or enclosed areas, or in heated and cooled living areas in these structures, inland and west of the specified boundary line in the designated catastrophe areas unless otherwise specified in the IRC or IBC.

The adoption of the 2006 Editions of the IRC and IBC, each with Texas Revisions, is necessary to promulgate the most current

wind load technology and construction standards for structures in the designated catastrophe areas to be eligible for windstorm insurance through the Association. The 2006 Editions of the IRC and IBC, each with Texas Revisions, reference the most recent American Society of Civil Engineers standard, known as the ASCE 7-05, which is used by architects, engineers, and structural designers throughout the construction industry nationwide. The adoption by reference of the 2006 Editions of the IRC and the IBC, each with Texas Revisions, will provide guidance and clarification for construction in the designated catastrophe areas, and when properly employed, will result in consistency and uniformity in the design, construction, and inspection of residences and businesses participating in the windstorm inspection process. The utilization of strict building codes is the most effective method of mitigating loss in areas which are vulnerable to catastrophic windstorms.

Adopted §5.4011(b) is necessary to exempt historic structures from §5.4011(a) for repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure.

The adopted amendments to §5.4603(a) are necessary to modify Forms WPI-2-BC-1, WPI-2-BC-2, WPI-2-BC-3 and WPI-2-BC-4, which are inspection verification forms pertaining to projects commencing construction at various times in the past, to include a space to list other as a description of a building modification not otherwise specified in the printed checklist of the forms; to modify Forms WPI-2-BC-2, WPI-2-BC-3 and WPI-2-BC-4 to include verification of exposure category used to define the design conditions for a building or structure; to modify Form WPI-2-BC-4 to indicate that it is not to apply to projects commencing construction after January 1, 2008; to adopt by reference new Form WPI-2-BC-5, a windstorm inspection verification form that will be used to document an inspection of a project that commenced construction on or after January 1, 2008; and to update the Design Certification Form WPI-2D to apply to projects that will commence construction on or after January 1, 2008.

Following the publication of the proposed amendments in the *Texas Register* on January 5, 2007, the Department received written comments from interested parties. The Department held a hearing on February 13, 2007, at which the Commissioner heard testimony and the Department received additional written comments. The Department has not made any changes to the proposed text as a result of comments. However, the Department has made necessary changes to the proposed text to allow adequate advance notice of the effective dates of standards, to align timelines for the usage of appropriate inspection forms, and to achieve consistency with the effective date of this adoption. The changes in the proposed effective dates of the 2006 Editions of the IRC and the IBC, each with Texas Revisions, and of the forms adopted by reference in §5.4603(a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), are necessary to give architects, engineers, structural designers, builders and property owners adequate time to comply. None of the changes materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously on notice. The specific changes are as follows.

The proposed effective dates for the 2006 Editions of the IRC and the IBC, each with Texas Revisions, are changed from September 1, 2007 to January 1, 2008. In proposed §5.4010(a), the date of September 1, 2007 for the end of the applicability period of the 2003 Editions of the IRC and the IBC, each with Texas Revisions, is changed to January 1, 2008. The proposed dates for the end of the applicability of wind resistance standards associated with the 2003 Editions of the IRC and the IBC in §5.4010(a)(1), (a)(2), and (a)(3) are changed from September 1, 2007 to January 1, 2008. In new §5.4011(a), the proposed effective dates of the 2006 Editions of the IRC and the IBC, each with Texas Revisions, are changed from September 1, 2007, to January 1, 2008. In §5.4011(a)(1), (a)(2), and (a)(3) the proposed effective dates of wind resistance standards associated with the 2006 Editions of the IRC and IBC are changed from September 1, 2007, to January 1, 2008. To coincide with the adopted effective date of the 2006 Editions of the IRC and the IBC, each with Texas Revisions, forms adopted by reference in §5.4603(a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) are effective January 1, 2008 rather than September 1, 2007 as proposed.

The adopted amendment to §5.4010(a) specifies the time period of effectiveness of the 2003 Editions of the IRC and the IBC, each with 2003 Texas Revisions, to be on or after January 1, 2005, and before January 1, 2008. Subsection (a)(1) - (3) of §5.4010 specifies the wind resistance standards for structures built seaward of the Intracoastal Canal, inland of the Intracoastal Canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County, and areas inland and west of the specified boundary line, respectively. These wind resistance standards conform to the 2003 IRC and IBC standards. The adopted amendments to the subsection specify the time period of effectiveness of the wind resistance standards for the 2003 IRC and IBC to be on and after January 1, 2005, and before January 1, 2008. An adopted amendment to §5.4010(a)(2) also corrects an erroneous cross reference.

Adopted subsection (a) of §5.4011 adopts by reference the 2006 Editions of the IRC and the IBC, each with Texas Revisions, to be effective for all structures in the designated catastrophe areas that are constructed, repaired, or to which additions are made on or after January 1, 2008 in order for the structures to be eligible for windstorm coverage through the Association.

Adopted subsection (a)(1) - (3) of §5.4011 provides the wind resistance standards for structures built seaward of the Intracoastal Canal, inland of the Intracoastal Canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County, and areas inland and west of the specified boundary line, respectively. The wind resistance requirements conform to the 2006 IRC and IBC standards, and are effective for structures constructed, repaired, or to which additions are made on or after January 1, 2008, for the structures to be eligible for catastrophe property insurance.

Adopted subsection (b) of §5.4011 provides an exemption from §5.4011(a) for repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure. Subsection (b)(1) - (3) of §5.4011 defines the attributes that make a structure a historic structure.

The adopted amendments to §5.4603(a) modify four inspection verification forms pertaining to projects commencing construction at various times in the past, introduce one new inspection verification form to apply to projects commencing construction on or after January 1, 2008, and update one design certification to apply to projects commencing construction on or after January 1, 2008.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: Two commenters express support for the adoption of the 2006 editions of the IRC and IBC with Texas Revisions.

Agency Response: The Department appreciates the supportive comments.

Comment: Two commenters oppose the Texas Revisions to the 2006 Editions of the IRC and IBC because, according to the commenters, any changes to the two codes should only come from the International Code Council.

Agency Response: Sections 2210.251 (formerly Article 21.49 §6A(a)), 2210.252 (formerly Article 21.49 §5(m)), 2210.307 (formerly Article 21.49 §6C) and 2210.308 (formerly Article 21.49 §6C(n)) of the Texas Insurance Code clearly authorize modifications to the IRC and IBC if the modifications increase the effectiveness of the standards. Under this statutory authority, the Department has adopted Texas amendments to the IRC and IBC since 2003. In §§2210.302 (formerly Article 21.49 §6C(b)) and 2210.307 (formerly Article 21.49 §6C) of the Insurance Code, the Texas legislature created the Advisory Committee on Building Code Specifications and Maintenance to provide advice and recommendations to the Commissioner on building requirements and maintenance in the Association's plan of operation. Section 2210.307 (formerly Article 21.49 §6C) of the Insurance Code does not limit the Advisory Committee to reviewing only those proposals that have been approved by the International Code Council, nor does it limit the Commissioner to adopting only those versions of standards that have been recommended by the Advisory Committee.

Comment: Two commenters oppose the Texas Revisions to the 2006 Editions of the IRC and the IBC because the amendments have not gone through any formal review process to determine if changes are necessary and because the Advisory Committee did not spend adequate time in deliberations.

Agency Response: The Department disagrees that the proposed amendments have not gone through a formal and adequate review process. The proposed amendments were properly considered before recommendation by the building code Advisory Committee in accordance with the statutory requirements of §2210.307 (formerly Article 21.49 §6C) of the Insurance Code. Department staff with expertise in coastal building code standards reviewed the proposed standards in accordance with §2210.307(e) (formerly Article 21.49 §6C(j)) of the Insurance Code. After consideration on July 12, 2006, the Advisory Committee recommended the adoption of the 2006 Editions of the IRC and the IBC, each as revised by the 2006 Texas Revisions, with the exception of the scope of the area to which §R325 of the Texas Revisions to the 2006 Edition of the IRC and §1716 of the Texas Revisions to the 2006 Edition of the IBC would apply. Additionally, in accordance with §2210.307(f) (formerly Article 21.49 §6C(k)) of the Insurance Code, as time allowed, interested persons' views were presented on proposals for change in applicable standards and procedures included on the Advisory Committee's published agenda. Also in accordance with §2210.307(f), the Advisory Committee considered each comment presented in acting on the disposition of each proposal. Further, in accordance with §2210.307(h) (formerly Article 21.49 §6C) of the Insurance Code, the Commissioner's decision on the recommendations of the Advisory Committee was considered in a subsequent rulemaking hearing.

In accordance with §2001.004(2) of the Government Code, the text of the rule was made available for public inspection, and in accordance with §2001.007(a) of the Government Code, the text of the rule was made available on the Internet through publication in the *Texas Register* on January 5, 2007. In accordance with §2001.023 of the Government Code, the Department gave 30 days' notice of its intent to adopt the rule, and in accordance with §2001.029(a) of the Government Code, gave all persons a reasonable opportunity to submit data, views, or arguments, orally or in writing. To that end, written comments were allowed for 30 days after publication of the rule in the *Texas Register*; and a public hearing on the proposed rule was held on February 13, 2007. Additional written and oral comments were taken at that time. These proceedings are consistent with §§2210.302 (formerly Article 21.49 §6C(b)) and 2210.307 (formerly Article 21.49 §6C) of the Insurance Code and §§2001.004, 2001.007, 2001.023, and 2001.029 of the Government Code, and enabled Department staff and the Commissioner to consider fully all written and oral submissions.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: Institute for Business and Home Safety and International Code Council (ICC).

Against: Home Builders Association of Southeast Texas, Greater Houston Builders Association, Texas Association of Builders, and one individual.

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 1. PLAN OF OPERATION

28 TAC §5.4010, §5.4011

The amendments and new section are adopted under Chapter 2210 (formerly Article 21.49) and §36.001 of the Insurance Code. Section 2210.151 (formerly Article 21.49 §5(c)) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the Association's plan of operation, and §2210.153 (formerly Article 21.49 §5(c)) allows for changes to the plan of operation. Sections 2210.004 (formerly Article 21.49 §§3(f)) and 2210.251 (formerly Article 21.49 §6A(a)) of the Insurance Code require that all structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the Commissioner for compliance with the building specifications in the plan of operation. Section 2210.251 (formerly Article 21.49 §6A(a)) of the Insurance Code also requires, for geographic areas specified by the Commissioner, the Commissioner to adopt by rule the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. Section 2210.251 (formerly Article 21.49 §6A(a)) of the Insurance Code further provides that for those geographic areas specified by the Commissioner, the Commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to the code. Section 2210.252 (formerly Article 21.49 §5(m)) of the Insurance Code authorizes the Commissioner by rule to supplement the plan of operation with the structural provisions of the IRC, and to adopt a supplement published by the International Code Council or an amendment to that code. Section 2210.302 (formerly Article 21.49 §6C(b)) of the Insurance Code establishes a Windstorm Building Code Advisory Committee on Specifications and Maintenance to advise and make recommendations to the Commissioner on building requirements and maintenance in the Association's plan of operation. In addition to

any other rulemaking authority granted under Chapter 2210 of the Insurance Code, §2210.308 (formerly Article 21.49 §6C(n)) of the Insurance Code gives the Commissioner the authority to adopt rules as necessary to implement Subchapter G of Chapter 2210 of the Insurance Code. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4010. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008 of this chapter (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) and which are constructed, repaired, or to which additions are made on and after January 1, 2005, and before January 1, 2008, shall comply with the 2003 Editions of the International Residential Code and the International Building Code, as each is revised by the 2003 Texas Revisions, and all of which are adopted by reference to be effective January 1, 2005. The codes are published by and available from the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 888-422-7233), and the 2003 Texas Revisions to the 2003 Edition of the International Residential Code and the 2003 Texas Revisions to the 2003 Edition of the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas, 78714-9104 and the Texas Department of Insurance website at www.tdi.state.tx.us. The following wind speed requirements shall apply:

(1) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after January 1, 2005, and before January 1, 2008, shall be designed and constructed to resist a 3-second gust of 130 miles per hour.

(2) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and east of the Specified Boundary Line and Certain Areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (b)(2)(A) and (B) of §5.4008 of this chapter and constructed, repaired, or to which additions are made on or after January 1, 2005, and before January 1, 2008, shall be designed and constructed to resist a 3-second gust of 120 miles per hour.

(3) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (c) of §5.4008 of this chapter and constructed, repaired, or to which additions are made on or after January 1, 2005, and before January 1, 2008, shall be designed and constructed to resist a 3-second gust of 110 miles per hour.

(b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions shall apply to the structure:

(1) The structure is listed or is eligible for listing on the National Register of Historic places.

(2) The structure is a Recorded Texas Historic Landmark (RTHL).

(3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

§5.4011. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008 of this chapter (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) and which are constructed, repaired, or to which additions are made on and after January 1, 2008, shall comply with the 2006 Editions of the International Residential Code and the International Building Code, as each is revised by the 2006 Texas Revisions, and all of which are adopted by reference to be effective January 1, 2008. The codes are published by and available from the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 888-422-7233), and the 2006 Texas Revisions to the 2006 Edition of the International Residential Code and the 2006 Texas Revisions to the 2006 Edition of the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas, 78714-9104 and on the Texas Department of Insurance website at www.tdi.state.tx.us. The following wind speed requirements shall apply:

(1) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after January 1, 2008, shall be designed and constructed to resist a 3-second gust of 130 miles per hour.

(2) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and East of the Specified Boundary Line and Certain Areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (b)(2)(A) and (B) of §5.4008 of this chapter and constructed, repaired, or to which additions are made on or after January 1, 2008, shall be designed and constructed to resist a 3-second gust of 120 miles per hour.

(3) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (c) of §5.4008 of this chapter and constructed, repaired, or to which additions are made on or after January 1, 2008, shall be designed and constructed to resist a 3-second gust of 110 miles per hour.

(b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions shall apply to the structure:

(1) The structure is listed or is eligible for listing on the National Register of Historic places.

(2) The structure is a Recorded Texas Historic Landmark (RTHL).

(3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702586
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 11, 2007
Proposal publication date: January 5, 2007
For further information, please call: (512) 463-6327

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DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §5.4603

The new section is adopted under Chapter 2210 (formerly Article 21.49) and §36.001 of the Insurance Code. Section 2210.151 (formerly Article 21.49 §5(c)) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the Association's plan of operation, and §2210.153 (formerly Article 21.49 §5(c)) allows for changes to the plan of operation. Sections 2210.004 (formerly Article 21.49 §§3(f)) and 2210.251 (formerly Article 21.49 §6A(a)) of the Insurance Code require that all structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the Commissioner for compliance with the building specifications in the plan of operation. Section 2210.251 (formerly Article 21.49 §6A(a)) of the Insurance Code also requires, for geographic areas specified by the Commissioner, the Commissioner to adopt by rule the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. Section 2210.251 (formerly Article 21.49 §6A(a)) of the Insurance Code further provides that for those geographic areas specified by the Commissioner, the Commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to the code. Section 2210.252 (formerly Article 21.49 §5(m)) of the Insurance Code authorizes the Commissioner by rule to supplement the plan of operation with the structural provisions of the IRC, and to adopt a supplement published by the International Code Council or an amendment to that code. Section 2210.302 (formerly Article 21.49 §6C(b)) of the Insurance Code establishes a Windstorm Building Code Advisory Committee on Specifications and Maintenance to advise and make recommendations to the Commissioner on building requirements and maintenance in the Association's plan of operation. In addition to any other rulemaking authority granted under Chapter 2210 of the Insurance Code, §2210.308 (formerly Article 21.49 §6C(n)) of the Insurance Code gives the Commissioner the authority to adopt rules as necessary to implement Subchapter G of Chapter 2210 of the Insurance Code. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4603. Forms for Windstorm Inspections.

(a) The Texas Department of Insurance adopts by reference the following forms for use in windstorm inspection:

(1) Application for Certificate of Compliance, Form WPI-1, effective January 1, 2005;

(2) Inspection Verification, Form WPI-2-BC-1, effective January 1, 2008;

(3) Inspection Verification, Form WPI-2-BC-2, effective January 1, 2008;

(4) Inspection Verification, Form WPI-2-BC-3, effective January 1, 2008;

(5) Inspection Verification, Form WPI-2-BC-4, effective January 1, 2008;

(6) Inspection Verification, Form WPI-2-BC-5, effective January 1, 2008;

(7) Design Certification, Form WPI-2D, effective January 1, 2008;

(8) Field Form, Form WPI-7, effective January 1, 2005;

(9) Certificate of Compliance, Form WPI-8, as amended October 1, 1998.

(b) These forms are published by and available from the Texas Department of Insurance. Copies of these forms may be obtained from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas 78714-9104 and the Texas Department of Insurance website at www.tdi.state.tx.us.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702587
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 11, 2007
Proposal publication date: January 5, 2007
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2802, §21.2803

The Commissioner of Insurance adopts amendments to §21.2802 and §21.2803, concerning elements of a clean health care claim. Section 21.2803 is adopted with changes to the proposed text as published in the January 19, 2007, issue of the *Texas Register* (32 TexReg 227). Section 21.2802 is adopted without changes.

The U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS), in conjunction with the National Uniform Claims Committee (NUCC) and the National Uniform Billing Committee (NUBC), has identified much of the information needed to process health care claims. Insurance Code §1204.102 requires a provider to use one of two forms, HCFA 1500 and UB-82/HCFA, or their successor forms, for submission of certain claims. Prior to this adoption, §21.2803 required usage of the CMS-1500 (12/90) form and the UB-92 CMS-1450 form for submission of certain clean claims. These adopted amendments are necessary to implement usage of two new successor forms, the CMS-1500 (08/05) and the UB-04 CMS-1450, and to establish data element requirements for use with those forms for clean claims that are filed pursuant to Insurance Code §843.336 and §1301.131. These amendments are also necessary to address the phase-out of the two previous forms, the CMS-1500 (12/90) and the UB-92 CMS-1450, exclusively required for use in filing certain health care claims prior to this adoption. In accordance with §1212.002 of the Insurance Code, the amendments were developed after consultation with the Technical Advisory Committee on Claims Processing (TACCP). The TACCP, which is appointed by the Commissioner, is comprised of representatives of insurers, health maintenance organizations, physicians and other health care providers, trade associations and other interested parties, such as the Office of Public Insurance Counsel. The TACCP advises the Commissioner on processing by insurers and health maintenance organizations of health care service claims submitted by physicians and other health care providers.

Following publication of the proposed amendments in the *Texas Register* on January 19, 2007, the Department received written comments from interested parties. The Department held a hearing on February 22, 2007, at which the Commissioner heard testimony and the Department received additional written comments. The Department has not made any changes to the proposed text as a result of comments. However, the Department has made necessary changes to the proposed text to more closely align timelines for mandatory form usage and national provider identifier (NPI) usage for clean claims with the most recent timelines that CMS is implementing for the same forms and identifier and for consistency with the effective date of this adoption. None of these changes materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously on notice.

On March 16, 2007, the NUCC notified the health care industry regarding the discovery of formatting errors on some of the revised CMS-1500 (08/05) claim forms and form negatives that had been distributed and advised that the incorrect forms were not scanning properly. As a result, CMS extended its acceptance period of the CMS-1500 (12/90) form beyond the original April 1, 2007, deadline, delaying mandatory use of the CMS-1500 (08/05) form for certain nonelectronic Medicare claims. (CMS Manual System, Pub. 100-04, Medicare Claims Processing, Transmittal 1208, Change Request 5568 (CMS, March 19, 2007)). CMS has since issued notice instructing Medicare contractors to begin rejecting claims received on or after July 2, 2007 on claim form CMS-1500 (12/90). (CMS Manual System, Pub. 100-04, Medicare Claims Processing, Transmittal 1247, Change Request 5616 (CMS, May 25, 2007)).

Further, on April 2, 2007, CMS issued a Guidance on Compliance with the HIPAA National Provider Identifier (NPI) Rule After the May 23, 2007, Implementation Deadline (Guidance) (http://www.cms.hhs.gov (follow "(NPI) Compliance Contingency Guidance" hyperlink)). The CMS Guidance indicated that the U.S. Department of Health and Human Services (DHHS) has received numerous inquiries raising concerns about the health care industry's state of readiness for NPI implementation. CMS, charged by the DHHS Secretary with enforcement of the NPI standard, therefore announced via the Guidance that in enforcing the NPI standard, CMS will consider the good faith efforts of a covered entity to comply with the NPI standard. The CMS Guidance contemplates the use of contingency plans to ensure the smooth flow of payments, provided the covered entity can demonstrate to CMS its active outreach and testing efforts toward full compliance. Under the CMS Guidance, a covered entity may end its contingency plan at any time prior to May 23, 2008, but cannot continue it after that date.

To more closely align the timelines for usage of successor forms required in this adoption with the timelines being implemented by CMS, and in recognition of the need for sufficient time to resolve issues related to the printing and distribution of error-free forms and form negatives, the Department has changed the timelines in proposed §21.2803(b)(1) - (4) for implementation of the CMS-1500 (08/05) and UB-04 CMS-1450 forms for clean claims.

Proposed §21.2803(b)(1) required use of the CMS-1500 (08/05) form for physicians and noninstitutional providers for clean claims filed or re-filed on or after April 2, 2007. Proposed §21.2803(b)(1) also established an optional transition period for claims filed or re-filed prior to April 2, 2007, upon notification by a preferred provider carrier or HMO that it was prepared to accept claims on the CMS-1500 (08/05). Section 21.2803(b)(1) as adopted mandates the use of successor form CMS-1500 (08/05) for physicians and noninstitutional providers for nonelectronic claims filed on or after the later of two dates: July 18, 2007, or the earliest compliance date established by CMS for mandatory use of the CMS-1500 (08/05) form for Medicare claims. If transition by CMS to mandatory usage of the CMS-1500 (08/05) claim form on and after July 2, 2007 is effected, adopted §21.2803(b)(1) requires physicians and noninstitutional providers submitting nonelectronic claims pursuant to Insurance Code §843.336 and §1301.131 to use the CMS-1500 (08/05) claim form for claims filed or re-filed on or after July 18, 2007 for clean claims. The Department has also modified the optional timeline for earlier transition set forth in proposed §21.2803(b)(1) for consistency with the new mandatory use timeline such that a physician or noninstitutional provider may file or re-file a claim on the CMS-1500 (08/05) form earlier than the new mandatory use timeline. The optional usage timeline is contingent upon notification by a preferred provider carrier or HMO that it is prepared to accept claims on the CMS-1500 (08/05). For consistency, the Department has similarly modified the timelines in proposed §21.2803(b)(2) for mandatory use and earlier optional transition with regard to the CMS-1500 (12/90) form. Proposed §21.2803(b)(3) required use of the UB-04 CMS-1450 for institutional providers for clean nonelectronic claims filed or re-filed on or after May 23, 2007, and provided for an optional transition period for claims filed between March 1, 2007 and May 22, 2007, upon notification by a preferred provider carrier or HMO that it was prepared to accept claims on the UB-04 CMS-1450. In §21.2803(b)(3) as adopted, the Department has changed the timelines for mandatory use of the UB-04 CMS-1450 for consistency with the effective date of this adoption order. New §21.2803(b)(3) as adopted mandates the use of successor form UB-04 CMS-1450 for institutional providers for nonelectronic claims filed on or after July 18, 2007. This mandatory usage date is consistent

with CMS mandatory usage dates that require use of the UB-04 CMS-1450 form for certain nonelectronic Medicare claims on and after May 23, 2007. (CMS Manual System, Pub. 100-04, Medicare Claims Processing, Transmittal 1104, Change Request 5072 (CMS, November 3, 2006)). The Department has similarly modified the optional earlier transition timeline set forth in proposed §21.2803(b)(3) for consistency with the new mandatory use timeline. Under new §21.2803(b)(3), an institutional provider may file or re-file a claim on the UB-04 CMS-1450 prior to the new mandatory use timeline upon notification that a preferred provider carrier or an HMO is prepared to accept claims filed on that form. For consistency, the Department has similarly modified the timelines in proposed §21.2803(b)(4) for mandatory use and earlier optional transition with regard to the UB-92 CMS-1450 form. The Department will continue to monitor developments at CMS relating to the usage of the two new successor forms and will issue an information bulletin to provide additional clarification regarding the CMS mandatory use date for the CMS-1500 (08/05) form when CMS effects the final transition.

Further, to support but not anticipate federal implementation and enforcement of the NPI standard, the Department has changed the proposed required date for submission of the NPI as a data element from May 23, 2007 to May 23, 2008. Specifically, the Department has made this change at §21.2803(b)(1)(W), (GG), (NN), and (PP), and (3)(CC) and (OO). In making this change, the Department recognizes the CMS Guidance regarding contingency plans and good faith implementation of the NPI standard.

No other changes are made to the proposed amendments to §21.2803 published in the January 19, 2007, issue of the *Texas Register*. The amendments to §21.2802(3) and (16) - (33), concerning definitions, are necessary to define the NPI number, a standard unique health identifier number for health care providers assigned pursuant to federal law for which the NUCC and NUBC have created specific information fields in the new successor forms. The amendments are also necessary to update statutory references related to the enactment of the nonsubstantive Insurance Code revision and to renumber subsequent definitions in accordance with the new definition for "NPI number."

Several amendments are made to §21.2803 which address the elements of a clean claim. The amendment to §21.2803(a)(2) is necessary to correct an internal cross-reference. The amendments to §21.2803(b) are necessary to identify new successor forms required for the submission of nonelectronic health care claims by physicians and providers and to establish mandatory form usage dates and optional form transition date(s) for those forms and for the predecessor forms.

The amendments throughout §21.2803(b) include editorial clarifications. The Department has amended §21.2803(b)(1)(H) - (L) and (Q), which require submission of documented proof with the claim in certain specified instances, by deleting the phrase "to the HMO or preferred provider carrier." Although the former rule regarding those data elements contains this phrase, the language is unnecessary because these subparagraphs already specify that, when required according to the instructions in those subparagraphs, the physician or provider must submit with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete the data element. This change is consistent with adopted amendments to address the corresponding data elements in §21.2803(b)(2)(H) - (L) and (Q), regarding required data elements for the CMS-1500 (12/90) form during the phase-out of that form, and does not substantively change requirements regarding these data elements. New §21.2803(b)(1)(U) is necessary to clarify the circumstances in which a physician or provider must enter the name of a referring primary care physician, specialty physician, hospital, or other source of referral, and does not effect a substantive change. New §21.2803(b)(1)(V) similarly clarifies the circumstances in which a physician or provider must submit the ID number of the referring primary care physician, specialty physician, or hospital. Because the physician or provider should already have submitted an entry affirming the nonexistence of a referring provider in field 17 when appropriate, the adopted rule does not require duplication of this information in field 17a.

New §21.2803(b)(1)(W) is necessary to require that, for claims filed or re-filed on or after May 23, 2008, if there is a referring physician noted in field 17, the physician or provider filing the claim must enter the NPI number of the referring primary care physician, specialty physician, or hospital, if the referring physician is eligible for an NPI number. New §21.2803(b)(1)(GG), (NN), and (PP) address similar NPI submission requirements for rendering providers, facilities, and billing providers. This NPI number usage requirement is consistent with the CMS Guidance regarding requirements and timelines for standard transactions and will support but not anticipate federal implementation and enforcement of the NPI number standard. This usage requirement ultimately allows for greater consistency between standard and nonstandard transactions. Further, this usage requirement strengthens the ability of physicians and providers to submit clean electronic claims by promoting the use of the NPI number in nonstandard transactions.

In addition to accommodating the CMS Guidance regarding NPI implementation in standard transactions, new §21.2803(b)(1) recognizes that the CMS Final Rule for HIPAA Administrative Simplification: Standard Unique Health Identifier for Health Care Providers, Subpart D, does not require a small health plan to comply with implementation specifications for use of the NPI number until May 23, 2008. New §21.2803(b)(1)(V), therefore, requires submission of the ID number of the referring primary care physician, specialty physician, or hospital as applicable. The adoption of §21.2803(b)(1)(V) is a continuation of the requirement applicable to the predecessor form CMS-1500 (12/90) and enables health plans to continue to identify physicians without reference to the NPI number. Similarly, and for the same reasons, new §21.2803(b)(1)(QQ) continues the requirement for submission of the rendering provider number if the HMO or preferred provider carrier required provider numbers and notified physicians and providers of the requirement prior to June 17, 2003. New §21.2803(b)(1)(OO) and (QQ) further reflect that information previously captured together in the single field 33 on form CMS-1500 (12/90) now has discrete subfields in successor form CMS-1500 (08/05).

Consistent with usage recommendations of the NUCC in the 1500 Health Insurance Claim Form Reference Instruction Manual for 08/05 Version, Version 2.1 (3/07) (NUCC Manual), new §21.2803(b)(1)(MM) requires a physician or provider to submit the name and address of the facility where services are rendered, if other than home, rather than if other than home or office.

Adopted amendments throughout §21.2803 change references to CMS-1500 (12/90) to distinguish the form from successor form CMS-1500 (08/05).

The adopted amendment to §21.2803(b)(2)(U) is necessary to clarify the circumstances in which a physician or provider must enter the name of a referring primary care physician, hospital, or other source of referral, and does not effect a substantive change. The adopted amendment to §21.2803(b)(2)(V) similarly clarifies the circumstances in which a physician or provider must submit the ID Number of the referring primary care physician, specialty physician, or hospital.

New §21.2803(b)(3)(C) requires submission of the type of bill code, including submission of a "7" in the fourth position of the UB-04 field 4 if the claim is a corrected claim. This requirement, which varies from the requirement to submit a "7" in the third position for the UB-92, is necessary because the UB-04 form now accommodates type of bill codes in the first three digits of the field and utilizes the fourth position of field 4 to report frequency of the bill.

New §21.2803(b)(3) reflects the NUBC's reorganization/renumbering of field assignments on the UB-04 form. Field identifications have therefore been updated throughout the paragraph in accord with the new field assignments. Further, §21.2803(b)(3) does not include marital status, submission of the procedure coding method used, or signature of the provider representative as required data elements for the UB-04 form. While the Department requires submission of this information on the predecessor form, the new UB-04 form no longer contains assigned fields for these purposes. Because the UB-04 form no longer contains a field assignment for prior patient payments, new §21.2803(b)(3) does not include this data element. Section 21.2803(b)(3) as adopted also does not set forth discrete data element requirements for covered days; non-covered days; coinsurance days; or lifetime reserve days, as are required for the UB-92 form. The UB-04 form no longer contains assigned fields for these specific purposes. Instead, a clean noninstitutional provider claim must include value codes corresponding to this information as appropriate and as set forth in §21.2803(b)(3)(S).

New §21.2803(b)(3)(CC) is necessary to require that an institutional provider submit the billing provider's NPI number for claims filed or re-filed on or after May 23, 2008, if the billing provider is eligible for an NPI number. New §21.2803(b)(3)(OO) contains a similar NPI number submission requirement for the attending physician. This NPI number usage requirement is consistent with the CMS Guidance regarding requirements and timelines for standard transactions and supports but does not anticipate federal implementation and enforcement of the NPI number standard. Ultimately, this usage requirement allows for greater consistency between standard and nonstandard transactions. Further, this usage requirement strengthens the ability of institutional providers to submit clean electronic claims by promoting the use of the NPI number in nonstandard transactions.

Consistent with the adopted rule regarding the required clean claim elements for the CMS-1500 (08/05) form, new §21.2803(b)(3)(DD) requires an institutional provider to submit the payor-designated provider number if the HMO or preferred provider carrier required provider numbers and gave notice of that requirement to physicians and providers prior to June 17, 2003. Similarly, new §21.2803(b)(3)(PP) requires institutional providers to submit the payor-designated attending physician ID. These requirements are a continuation of the requirements applicable to the predecessor form UB-92 and are necessary to enable health plans to continue to identify these providers without reference to the NPI number.

The adopted amendment to §21.2803(b)(4)(LL) is necessary to delete a repetitive reference. The adopted amendments to §21.2803(d), relating to coordination of benefits and non-duplication of benefits, are necessary to update internal cross-references and specify required elements necessary for a secondary plan to process claims in accordance with the applicable form.

The amendments throughout §21.2803 further address clarifications necessary to update internal cross-references and correct minor punctuation and grammatical errors.

The adopted amendment to §21.2802(16) adds a definition for the NPI number, a standard unique health identifier number for health care providers assigned pursuant to federal law for which the National Uniform Billing Committee and the National Uniform Claims Committee have created specific information fields in the new successor forms. The adopted amendment to §21.2803(a)(2) corrects a reference to clarify that a physician or provider submits a clean electronic claim, including a clean electronic dental claim filed with an HMO, by providing to the specified carrier the required data in compliance with the requirements in §21.2803(e) and (f).

The adopted amendments to §21.2803(b) mandate usage of certain successor forms for specified claims; establish optional timelines to allow for transition to the new forms; establish required usage dates; and establish the data elements required for a physician or provider to submit a clean claim. The adopted amendments to §21.2803(b)(1) redesignate former subsection (b)(1) as subsection (b)(2) and add a new subsection (b)(1). The new §21.2803(b)(1) mandates the use of CMS-1500 (08/05) form for physicians and noninstitutional providers for nonelectronic claims filed or re-filed on or after the later of two dates: July 18, 2007, or the earliest compliance date established by CMS for mandatory use of the CMS-1500 (08/05) form for Medicare claims. New §21.2803(b)(1) also sets forth the data elements that physicians and noninstitutional providers must complete in accordance with that paragraph for clean claims. New §21.2803(b)(1) further provides for an optional transition period prior to the mandatory usage date. Upon notification by an HMO or a preferred provider carrier that it is prepared to accept claims filed or re-filed prior to the mandatory usage date on form CMS-1500 (08/05), a physician or non-institutional provider may submit claims using that successor form, subject to the data element requirements set forth in the paragraph for clean claims for form CMS-1500 (08/05). New §21.2803(b)(1)(A) - (QQ) specifies the field location of those data elements on successor form CMS-1500 (08/05).

The adopted amendments to redesignated §21.2803(b)(2) (subsection (b)(1) in the former rule) address the phase-out period of form CMS-1500 (12/90). The amendments specify that physicians and noninstitutional providers filing or re-filing nonelectronic claims prior to the earlier of two dates, July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) form for Medicare claims, must use predecessor form CMS-1500 (12/90). The adopted amendments continue the data element requirements applicable to the CMS-1500 (12/90) form for clean claims. The amendments further provide that, upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form CMS-1500 (08/05), a physician or noninstitutional provider may submit claims using form CMS-1500 (08/05) prior to the §21.2803(b)(1) mandatory usage date, subject to the required data elements set forth in new §21.2803(b)(1).

The adopted amendments to §21.2803(b)(3) redesignate former subsection (b)(2) as subsection (b)(4) and add a new subsection (b)(3). New §21.2803(b)(3) mandates the use of successor form UB-04 CMS-1450 for institutional providers for nonelectronic claims filed or re-filed on or after July 18, 2007, and sets forth the data elements that institutional providers must complete in accordance with this paragraph for clean claims. An optional transition period is provided under adopted §21.2803(b)(3), allowing for use of form UB-04 CMS-1450 prior to the mandatory usage date established in §21.2803(b)(3). Prior to the §21.2803(b)(3) mandatory usage date, upon notification from an HMO or preferred provider carrier that it is prepared to accept claims filed or re-filed on the new successor form, an institutional provider may submit claims using successor form UB-04 CMS-1450, subject to the data elements set forth in §21.2803(b)(3) for clean claims.

The adopted amendments to redesignated §21.2803(b)(4) (subsection (b)(2) in the former rule) address the phase-out period for form UB-92 CMS-1450. The amendments require that institutional providers filing or re-filing nonelectronic claims prior to July 18, 2007, must use predecessor form UB-92. The amendments continue the data element requirements applicable to that form for clean claims. The amendments further provide that upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form UB-04 earlier than the §21.2803(b)(3) mandatory usage date, the institutional provider may submit claims using the UB-04 CMS-1450 form prior to the §21.2803(b)(3) mandatory usage date, subject to the data element requirements established in §21.2803(b)(3) for clean claims.

The adopted amendments to §21.2803(d), relating to coordination of benefits and non-duplication of benefits, update internal cross-references and specify required data elements necessary for a secondary plan to process claims in accordance with the applicable form.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General Comments

Comment: Commenters commend the Department for its diligence and effort to adopt rules necessary to accommodate the revision of the information fields set forth in the two new successor forms, the CMS-1500 (08/05) and the UB-04 CMS-1450. Some commenters generally agree with the proposed amendments to coordinate the modifications required by the implementation of the federally-mandated National Provider Identifier with the state requirements for submission of clean claims on the successor forms. One commenter further commended the Department for its work with the Technical Advisory Committee on Claims Processing (TACCP) in evaluation of draft rules and consideration of the committee's recommendations.

Agency Response: The Department appreciates the comments. The Department has given close consideration to federal implementation efforts with regard to the National Provider Identifier in adopting the rule.

Comment: One commenter expresses appreciation that the Department has restricted its rulemaking proposal to only those issues necessary to transition to the new claim formats because, according to the commenter, the need for smooth transition to the new forms outweighs any benefit that would be gained from further changes in the data element requirements.

Agency Response: The Department appreciates the comment. Most of the data element requirements in new §21.2803(b)(1) and (b)(3) are consistent with those data element requirements previously identified for use in clean claims on the predecessor forms. The Department will monitor the need for future rulemaking with regard to additions, deletions, or changes to data element requirements.

§21.2803(b)(1) and (2)

Comment: A commenter supports the proposed timelines for use of the CMS-1500 (08/05) form and the transition period during which either the 08/05 version or the 12/90 version of the CMS-1500 claim form may be submitted. The commenter states that the proposed rules allow use of either version of the CMS-1500 form in the period between final adoption of the proposed rules and April 2, 2007, and require use of the CMS-1500 (08/05) form on or after April 2, 2007. The commenter states that these timelines are consistent with those adopted by CMS, the federal agency charged with oversight of the Medicare program.

Agency Response: The Department appreciates the supportive comment and clarifies that a claim filed or re-filed prior to the §21.2803(b)(1) mandatory usage date for the CMS-1500 (08/05) form will not qualify as a potential clean claim absent prior notification from the HMO or preferred provider carrier that it is prepared to accept claims filed or re-filed on the CMS-1500 (08/05) form. Based upon recent changes to CMS timelines for mandatory use of the CMS-1500 (08/05) form with regard to Medicare claims and errors related to the printing and distribution of improperly formatted forms and form negatives, the Department has had to revise its timelines in order to more closely align those timelines with federal implementation. Adopted §21.2803(b)(1) requires physicians or noninstitutional providers filing or re-filing nonelectronic claims to use the CMS-1500 (08/05) form on or after the later of July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) form for Medicare claims, in accordance with the special instructions applicable to the data elements described in §21.2803(b)(1) for clean claims. Further, adopted §21.2803(b)(1) provides that a physician or noninstitutional provider may file or re-file a nonelectronic claim using the CMS-1500 (08/05) form earlier than the §21.2803(b)(1) mandatory use date, subject to the §21.2803(b)(1) required data elements for clean claims, upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form CMS-1500 (08/05). Similarly, adopted §21.2803(b)(2) requires physicians and noninstitutional providers filing or re-filing nonelectronic claims before the later of July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) form for Medicare claims, to use the CMS-1500 (12/90) form, in accordance with the special instructions applicable to the data elements described in §21.2803(b)(2) for clean claims. Adopted §21.2803(b)(2) also provides, however, that a physician or noninstitutional provider may file or re-file a nonelectronic claim using the CMS-1500 (08/05) form earlier than the §21.2803(b)(1) mandatory use date, subject to the §21.2803(b)(1) required data elements for clean claims, upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form CMS-1500 (08/05).

§21.2803(b)(1), (2), (3), and (4)

Comment: A commenter states that carriers using automated clean claim compliance processes will find it more difficult to use multiple clean claim formats and seeks confirmation that a carrier

may begin accepting the new claim forms prior to the mandatory usage dates without communicating to providers that the new forms will be treated as clean claims. According to the commenter, while the carrier may be able to accept claim information in multiple formats and process the claim with sufficient information, the carrier may be limited in its ability to treat multiple claim formats as clean. The commenter seeks clarification that mere acceptance of a new claim format prior to the mandatory usage date for the new forms does not require the carrier to treat the claim as a clean claim even if all necessary fields are completed. The commenter requests that communication by a carrier that it is able to treat the new claim formats as clean claims should serve as the necessary notice required in the adopted rule to allow for optional earlier transition to the new forms.

Agency Response: The Department clarifies that the optional transition periods for submission of the CMS-1500 (08/05) form and the UB-04 CMS-1450 form do not apply absent notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on the respective successor forms. If an HMO or preferred provider carrier notifies physicians and providers that it is prepared to accept claims on these successor forms prior to the mandatory usage dates, the HMO or preferred provider carrier must comply with its prompt pay obligations with respect to such claims. Mere acceptance and processing of a claim on the successor form prior to the mandatory usage date for the successor form will not require the carrier to treat the claim as a potential clean claim if the carrier has not notified physicians and providers that the carrier is prepared to accept the new claim format.

Comment: A commenter requests clarification that acceptance of a claim on the predecessor claim forms after the mandatory usage date for filing and re-filing of claims on the CMS-1500 (08/05) form and the UB-04 CMS-1450 form does not impose a requirement to treat such claims as clean even if all necessary fields are completed.

Agency Response: The Department clarifies that a physician or provider who files or re-files a non-electronic claim after the mandatory usage dates for the CMS-1500 (08/05) form and the UB-04 CMS-1450 form must submit the claim on the applicable claim form, subject to the data element requirements set forth in §21.2803(b)(1) and (b)(3), in order for the claim to be clean. Mere acceptance and processing of a claim submitted on the predecessor form after the mandatory usage dates does not impose a requirement to treat such claims as potentially clean claims.

§21.2803(b)(1)(U) and (V)

Comment: A commenter states that it has on several occasions urged the Department to revise the requirements for CMS-1500, fields 17 and 17a, regarding the name of a referring physician or other source and the ID number of the referring physician, respectively. The data element requirements for these fields for the predecessor form required submission of the name and identification number of the referring physician or, absent a referral, entry of the term "Self-referral" or "None." The commenter asserts that the fields should be conditional and therefore left blank if there is not a referring physician. The commenter supports the proposed change designating CMS-1500 (08/05), fields 17a and 17b as conditional and not requiring entry of the term "Self-referral" or "None" when there is no referring physician. The commenter states that field 17 should similarly be a conditional field.

Agency Response: The Department appreciates the supportive comment but declines to make the suggested change. Section 21.2803(b)(1)(U) continues the requirement that a physician or provider affirm the nonexistence of a referring primary care physician, specialty physician, hospital or other source by entering the term "Self-referral" or "None" in field 17 when applicable. Carriers have indicated that this requirement facilitates claims processing by affirming that the billing party has not simply failed to make an entry in the field. However, in recognition that this affirmation is already required in field 17 and therefore would be duplicative if repeated, new §21.2803(b)(1)(V) does not require resubmission of this entry for the referring entity's ID Number. The Department will monitor the continued need for this data element for possible future rulemaking.

§21.2803(b)(1)(X)

Comment: A commenter notes that under the proposed rule, CMS-1500 (08/05), field 19 continues to be a conditional field to be completed when a physician uses an unlisted or not classified procedure code or a National Drug Code. The commenter is not opposed to continued use of this field in this manner and does not think such use is inconsistent with the NUCC Manual recommendations. The commenter requests clarification of whether submission of supplemental information consistent with the NUCC Manual instruction would render a claim deficient. The commenter asserts that submission of the supplemental information in field 24 would constitute submission of data elements or information on or with a claim form by a physician or provider that are in addition to those required for a clean claim as described in §21.2803(h) and would not, therefore, render the claim deficient.

Agency Response: The Department clarifies that the use of field 24 on the CMS-1500 (08/05) form in a manner consistent with the NUCC Manual instruction for that field would not, in and of itself, render a claim deficient. The commenter is correct that §21.2803(h) clarifies that the submission of data elements or information on or with a claim form by a physician or provider in addition to those required for a clean claim under the section shall not render the claim deficient.

§21.2803(b)(1)(QQ)

Comment: A commenter notes that the proposed rule requires the use of a legacy identifier issued by a health plan for which notice was given prior to June 17, 2003, in field 33b, CMS-1500 (08/05). The commenter states that the proposed rule is consistent with the corresponding data element requirement for field 33 on claim form CMS-1500 (12/90), which the commenter states identifies medical groups for which a health plan has assigned a legacy identification number. The commenter states that a medical group's identification number is often used when individual physicians and other healthcare professionals provide services under a health plan contract with a medical group. The commenter further asserts that because medical groups may apply and receive a Type 2 NPI to identify themselves as an entity separate from the individual provider, the continued requirement of the legacy identifier for the billing provider is superfluous and should only be required if the billing provider is not eligible for an NPI.

Agency Response: The Department declines to make the suggested change. The CMS Final Rule for HIPAA Administrative Simplification regarding the NPI does not require a small health plan to comply with NPI usage requirements until May 23, 2008. Further, based upon the CMS Guidance contemplating the use of NPI contingency plans until May 23, 2008, imposition of an

earlier requirement for NPI does not appear to be advisable at this time. The adopted amendment therefore requires submission of the ID number of the billing providers in certain circumstances so that health plans can identify those billing providers without reference to the NPI.

§21.2803(b)(3)(N)

Comment: A commenter recommends striking the requirement for submission of the discharge hour in field 16 of the UB-04 for outpatient surgeries or observation stays and limiting the requirement to inpatient admissions as recommended by the NUBC in its National Uniform Billing Committee Official UB-04 Data Specifications Manual 2007 (NUBC Manual).

Agency Response: The Department declines to make the suggested change. The Department consulted with the TACCP regarding the specific changes to this data element requirement recommended by the commenter and asked for consideration of how such changes would affect claims processing. The response from carrier representatives indicates that the discharge hour for outpatient surgeries and observation stays continues to have importance to claims processing by the carrier. The Department will, however, monitor the continuing need for this data element and consider future rulemaking as necessary.

§21.2803(b)(3)(S)

Comment: A commenter recommends striking both the inpatient admission requirement for use of value codes and amounts and the permissive language that allows providers to use a value code of "01." The commenter states that the value code and amount data elements in fields 39 through 41 of the UB-04 should only be completed when the value code is applicable to the claim or encounter as recommended in the NUBC Manual.

Agency Response: The Department declines to make the suggested change. Under the rule, a provider may indicate that no value code applies to the inpatient admission by entering a value of "01." The Department consulted with the TACCP regarding the specific changes to this data element requirement recommended by the commenter and asked for consideration of how such changes would affect claims processing. The response from one provider is consistent with that submitted by the commenter. Response from carrier representatives, however, indicates opposition to the suggested changes. Carrier representatives indicate that the inpatient admission requirement continues to be appropriate and assert that a provider's affirmation that no value code applies to the claim facilitates claim processing. The carrier representatives assert that the affirmation evidences that the provider did not inadvertently leave the field blank. The Department will monitor the continuing need for this data element and consider future rulemaking as necessary.

§21.2803(b)(3)(T)

Comment: A commenter recommends changing the requirement for submission of a revenue code in UB-04, field 42 to achieve greater alignment with the NUBC Manual recommendations by requiring that "revenue code... is required for inpatient services and for outpatient services, the corresponding HCPCs code should be reported."

Agency Response: The Department declines to revise proposed §21.2803(b)(3)(T) as the commenter recommends. Section 21.2803(b)(3)(V) addresses data element requirements related to HCPCs. Further, §21.2803(h) clarifies that the submission of data elements or information on or with a claim form by a physician or provider in addition to those required for a clean claim under the section shall not render the claim deficient. A provider is therefore not precluded from submitting additional information on a voluntary basis. The Department will monitor whether carriers need additional information related to field 42 for claims processing and will consider future rulemaking as necessary.

§21.2803(b)(3)(V)

Comment: A commenter recommends that the Department more closely follow NUBC Manual recommendations for UB-04, field 44 by requiring submission of HCPCS/Rates/HIPPS codes for outpatient claims when an appropriate HCPCS or HIPPS code exists for the service line item, or for inpatient claims when an appropriate HCPCS code for drugs and/or biologics or a HIPPS code exists for the service line item.

Agency Response: The Department declines to make the suggested change at this time. Section 21.2803(h) clarifies that the submission of data elements or information on or with a claim form by a physician or provider in addition to those required for a clean claim under the section shall not render the claim deficient. A provider is therefore not precluded from submitting additional information on a voluntary basis. However, the Department will monitor whether any changes to the circumstances in which HCPCs and rate information should be required becomes appropriate, as well as whether carriers need additional information related to field 44 for claims processing, and will consider future rulemaking as necessary.

§21.2803(b)(3)(X)

Comment: One commenter recommends that the Department more closely follow NUBC Manual recommendations for UB-04, field 45, line 23, by referring to the "creation date" rather than the date the bill was submitted and by requiring the submission of this information on all pages of the UB-04 form.

Agency Response: The Department declines to make the suggested change. The phrase "date bill submitted" as used in the rule clearly conveys the information that a provider must enter in this field. Additionally, §21.2803(h) clarifies that the submission of data elements or information on or with a claim form by a physician or provider in addition to those required for a clean claim under the section shall not render the claim deficient. A provider is therefore not precluded from submitting additional information on a voluntary basis. The Department will monitor whether changes in submission requirements related to field 45 become necessary for claims processing and will consider future rulemaking as necessary.

§21.2803(b)(3)(MM)

Comment: A commenter recommends that the Department more closely align its rule with NUBC Manual recommendations for UB-04, field 74, by deleting the application of this requirement regarding principal procedure codes for purposes of outpatient surgical procedures.

Agency Response: The Department declines to make the suggested change. The Department consulted with the TACCP regarding the specific changes to this data element requirement recommended by this commenter and asked for consideration of how such changes would affect claims processing. Response submitted by carriers pursuant to that request indicates that principal procedure code information continues to be necessary for claims processing of both inpatient and outpatient claims. The Department will, however, continue to monitor the need for future rulemaking with regard to this data element.

§21.2803(b)(3)

Comment: One commenter recommends that the Department more closely align its rule with NUBC Manual recommendations for the UB-04 form by adding several required data elements to subsection (b)(3). For UB-04, field 51, the commenter recommends requiring submission of the HIPAA National Plan Identifier when such identifier is mandated and by otherwise requiring submission of the legacy or proprietary number that the health plan has assigned to its particular plan operations. For UB-04, field 52, the commenter recommends requiring providers to enter an "I" to indicate informed consent to release medical information for conditions or diagnoses regulated by federal statute and when the provider has not collected a signature and state or federal laws do not supersede the HIPAA Privacy Rule by requiring a signature to be collected. The commenter further recommends that the provider enter a "Y" when the provider has a signed statement permitting the release of information related to the claim and that this submission be required when state or federal laws do not supersede the HIPAA Privacy Rule by requiring a signature to be collected. For UB-04, field 53, the commenter recommends requiring submission of an entry to indicate that the provider has a signed form authorizing the third party payor to remit payment directly to the provider. The commenter also notes that health plans that have arrangements with affiliate health plans in different states could use this field to make payment to the provider rather than the insured individual. Finally, for UB-04, fields 67, 67A-Q, and 72, the commenter states that the present on admission indicator should be a required submission in the eighth position of the field for certain circumstances. The commenter further indicates that the American Health Information Management Association, American Hospital Association, CMS, and the National Center for Health Statistics will publish a list of ICD-9-CM codes for which the present on admission indicator does not apply and that the submission of the present on admission indicator should be unreported only for codes on that list. The commenter indicates that the list will be included in the present on admission guidelines published in the ICD-9-CM Official Guidelines for Coding and Reporting and updated as needed. The commenter is concerned that health plans that receive present on admission indicator information on a claim should not reject the claim because the health plan has no use for the present on admission indicator information or is not prepared to accept the fields.

Agency Response: The Department disagrees with the suggested changes. These recommendations for additional requirements related to UB-04, fields 51, 52, 53, 67, 67A - Q, and 72 would constitute substantive changes to the proposed rule. Regarding UB-04, field 51, it appears to be premature to address by rule a standard identifier that CMS has not yet implemented. Further, §21.2803(h) clarifies that the submission of data elements or information on or with a claim form by a physician or provider in addition to those required for a clean claim under the section shall not render the claim deficient. A provider is therefore not precluded from submitting additional information on a voluntary basis. The Department will monitor whether this additional information is necessary for claims processing and will consider future rulemaking as necessary. In addition, the Department will monitor progress regarding the implementation of present on admission indicators to determine the need for future rulemaking with regard to those data elements.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: United Healthcare.

For, with changes: Texas Hospital Association and Texas Medical Association.

Against: None.

The amendments are adopted under the Insurance Code §§843.336, 1301.131, 1204.102, 1212.002, and 36.001. Sections 843.336(b) and 1301.131(a) provide that nonelectronic claims by physicians and noninstitutional providers are clean claims if the claims are submitted using form CMS-1500 or, if adopted by the Commissioner by rule, a successor to that form developed by the National Uniform Claims Committee or its successor. Sections 843.336(c) and 1301.131(b) further provide that a nonelectronic claim by an institutional provider is a clean claim if the claim is submitted using form UB-92 CMS-1450 or, if adopted by the Commissioner by rule, a successor to that form developed by the National Uniform Billing Committee (NUBC). Section 843.336(d) and §1301.131(c) authorize the Commissioner to adopt rules that specify the information that must be entered into the appropriate fields on the applicable claim form for a claim to be a clean claim. Section 1204.102 requires a provider who seeks payment or reimbursement under a health benefit plan and the health benefit plan issuer that issued the plan to use uniform billing forms CMS-1500, UB-82 CMS-1450, or successor forms to those forms developed by the NUBC or its successor. Section 1212.002 requires the Commissioner to consult the technical advisory committee established pursuant to Chapter 1212, Insurance Code, before adopting any rule related to technical aspects of coding of health care services and claims development, submission, processing, adjudication, and payment for medical care and health care services provided to patients. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.2803. Elements of a Clean Claim.

(a) Filing a Clean Claim. A physician or provider submits a clean claim by providing to an HMO, preferred provider carrier, or any other entity designated for receipt of claims pursuant to §21.2811 of this title (related to Disclosure of Processing Procedures):

(1) for non-electronic claims, the required data elements specified in subsection (b) of this section, or for non-electronic dental claims filed with an HMO, the required data elements specified in subsection (c) of this section;

(2) for electronic claims and for electronic dental claims filed with an HMO, the required data elements specified in subsections (e) and (f) of this section; and

(3) if applicable, any coordination of benefits or non-duplication of benefits information pursuant to subsection (d) of this section.

(b) Required data elements. CMS has developed claim forms which provide much of the information needed to process claims. Insurance Code Chapter 1204 identifies two of these forms, HCFA 1500 and UB-82/HCFA, and their successor forms, as required for the submission of certain claims. The terms in paragraphs (1) - (4) of this subsection are based upon the terms CMS used on successor forms CMS-1500 (08/05), CMS-1500 (12/90), UB-04 CMS-1450, and UB-92 CMS-1450. The parenthetical information following each term refers to the applicable CMS claim form and the field number to which that term corresponds on the CMS claim form. Mandatory form usage dates and optional form transition dates for nonelectronic claims

filed or re-filed by physicians or noninstitutional providers are set forth in paragraphs (1) and (2) of this subsection. Mandatory form usage dates and optional form transition dates for nonelectronic claims filed or re-filed by institutional providers are set forth in paragraphs (3) and (4) of this subsection.

(1) Required form and data elements for physicians or noninstitutional providers for claims filed or re-filed on or after the later of July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) for Medicare claims. The CMS-1500 (08/05) and the data elements described in this paragraph are required for claims filed or re-filed by physicians or noninstitutional providers on or after the later of these two dates: July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) for Medicare claims. The CMS-1500 (08/05) must be completed in accordance with the special instructions applicable to the data element as described by this paragraph for clean claims filed by physicians and noninstitutional providers. Further, upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form CMS-1500 (08/05), a physician or noninstitutional provider may submit claims on form CMS-1500 (08/05) prior to the mandatory use date described in this paragraph, subject to the required data elements set forth in this paragraph.

(A) subscriber's/patient's plan ID number (CMS-1500 (08/05), field 1a) is required;

(B) patient's name (CMS-1500 (08/05), field 2) is required;

(C) patient's date of birth and gender (CMS-1500 (08/05), field 3) is required;

(D) subscriber's name (CMS-1500 (08/05), field 4) is required, if shown on the patient's ID card;

(E) patient's address (street or P.O. Box, city, state, ZIP) (CMS-1500 (08/05), field 5) is required;

(F) patient's relationship to subscriber (CMS-1500 (08/05), field 6) is required;

(G) subscriber's address (street or P.O. Box, city, state, ZIP) (CMS-1500 (08/05), field 7) is required, but physician or provider may enter "same" if the subscriber's address is the same as the patient's address required by subparagraph (E) of this paragraph;

(H) other insured's or enrollee's name (CMS-1500 (08/05), field 9) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (1)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(I) other insured's or enrollee's policy/group number (CMS-1500 (08/05), field 9a) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (1)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(J) other insured's or enrollee's date of birth (CMS-1500 (08/05), field 9b) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (1)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(K) other insured's or enrollee's plan name (employer, school, etc.) (CMS-1500 (08/05), field 9c) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (1)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element. If the field is required and the physician or provider is a facility-based radiologist, pathologist, or anesthesiologist with no direct patient contact, the physician or provider must either enter the information or enter "NA" (not available) if the information is unknown;

(L) other insured's or enrollee's HMO or insurer name (CMS-1500 (08/05), field 9d) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (1)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(M) whether patient's condition is related to employment, auto accident, or other accident (CMS-1500 (08/05), field 10) is required, but facility-based radiologists, pathologists, or anesthesiologists shall enter "N" if the answer is "No" or if the information is not available;

(N) if the claim is a duplicate claim, a "D" is required; if the claim is a corrected claim, a "C" is required (CMS-1500 (08/05), field 10d);

(O) subscriber's policy number (CMS-1500 (08/05), field 11) is required;

(P) HMO or insurance company name (CMS-1500 (08/05), field 11c) is required;

(Q) disclosure of any other health benefit plans (CMS-1500 (08/05), field 11d) is required;

(i) if answered "yes," then:

(I) data elements specified in paragraph (1)(H) - (L) of this subsection are required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete the data elements in paragraph (1)(H) - (L) of this subsection;

(II) the data element specified in paragraph (1)(II) of this subsection is required when submitting claims to secondary payor HMOs or preferred provider carriers;

(ii) if answered "no," the data elements specified in paragraph (1)(H) - (L) of this subsection are not required if the physician or provider has on file a document signed within the past 12 months by the patient or authorized person stating that there is no other health care coverage; although the submission of the signed document is not a required data element, the physician or provider shall submit a copy of the signed document to the HMO or preferred provider carrier upon request;

(R) patient's or authorized person's signature or notation that the signature is on file with the physician or provider (CMS-1500 (08/05), field 12) is required;

(S) subscriber's or authorized person's signature or notation that the signature is on file with the physician or provider (CMS-1500 (08/05), field 13) is required;

(T) date of injury (CMS-1500 (08/05), field 14) is required if due to an accident;

(U) when applicable, the physician or provider shall enter the name of the referring primary care physician, specialty physician, hospital, or other source (CMS-1500 (08/05), field 17); however, if there is no referral, the physician or provider shall enter "Self-referral" or "None";

(V) if there is a referring physician noted in CMS-1500 (08/05), field 17, the physician or provider shall enter the ID Number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (08/05), field 17a);

(W) for claims filed or re-filed on or after May 23, 2008, if there is a referring physician noted in CMS-1500 (08/05), field 17, the physician or provider shall enter the NPI number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (08/05), field 17b) if the referring physician is eligible for an NPI number;

(X) narrative description of procedure (CMS-1500 (08/05), field 19) is required when a physician or provider uses an unlisted or not classified procedure code or an NDC code for drugs;

(Y) for diagnosis codes or nature of illness or injury (CMS-1500 (08/05), field 21), up to four diagnosis codes may be entered, but at least one is required (primary diagnosis must be entered first);

(Z) verification number (CMS-1500 (08/05), field 23) is required if services have been verified pursuant to §19.1724 of this title (relating to Verification). If no verification has been provided, a prior authorization number (CMS 1500 (08/05), field 23) is required when prior authorization is required and granted;

(AA) date(s) of service (CMS-1500 (08/05), field 24A) is required;

(BB) place of service code(s) (CMS-1500 (08/05), field 24B) is required;

(CC) procedure/modifier code (CMS-1500 (08/05), field 24D) is required;

(DD) diagnosis code by specific service (CMS-1500 (08/05), field 24E) is required with the first code linked to the applicable diagnosis code for that service in field 21;

(EE) charge for each listed service (CMS-1500 (08/05), field 24F) is required;

(FF) number of days or units (CMS-1500 (08/05), field 24G) is required;

(GG) for claims filed or re-filed on or after May 23, 2008, the NPI number of the rendering physician or provider (CMS-1500 (08/05), field 24J, unshaded portion) is required if the rendering provider is not the billing provider listed in CMS-1500 (08/05), field 33, and if the rendering physician or provider is eligible for an NPI number;

(HH) physician's or provider's federal tax ID number (CMS-1500 (08/05), field 25) is required;

(II) whether assignment was accepted (CMS-1500 (08/05), field 27) is required if assignment under Medicare has been accepted;

(JJ) total charge (CMS-1500 (08/05), field 28) is required;

(KK) amount paid (CMS-1500 (08/05), field 29) is required if an amount has been paid to the physician or provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber or by a primary plan in accordance with paragraph (1)(P) of this subsection and as required by subsection (d) of this section;

(LL) signature of physician or provider or notation that the signature is on file with the HMO or preferred provider carrier (CMS-1500 (08/05), field 31) is required;

(MM) name and address of facility where services rendered (if other than home) (CMS-1500 (08/05), field 32) is required;

(NN) for claims filed or re-filed on or after May 23, 2008, the NPI number of facility where services are rendered (other than home) is required (CMS-1500 (08/05), field 32a) if the facility is eligible for an NPI;

(OO) physician's or provider's billing name, address and telephone number (CMS-1500 (08/05), field 33) is required;

(PP) for claims filed or re-filed on or after May 23, 2008, the NPI number of billing provider (CMS-1500 (08/05), field 33a) is required if the billing provider is eligible for an NPI number; and

(QQ) provider number (CMS-1500 (08/05), field 33b) is required if the HMO or preferred provider carrier required provider numbers and gave notice of the requirement to physicians and providers prior to June 17, 2003.

(2) Required form and data elements for physicians or noninstitutional providers for claims filed or re-filed before the later of July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) for Medicare claims. The CMS-1500 (12/90) and the data elements described in this paragraph are required for claims filed or re-filed by physicians or noninstitutional providers before the later of these two dates: July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) for Medicare claims. The CMS-1500 (12/90) must be completed in accordance with the special instructions applicable to the data element as described in this paragraph for clean claims filed by physicians and noninstitutional providers. However, upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form CMS-1500 (08/05), a physician or noninstitutional provider may submit claims on form CMS-1500 (08/05) prior to the subsection (b)(1) mandatory use date, subject to the subsection (b)(1) required data elements.

(A) subscriber's/patient's plan ID number (CMS-1500 (12/90), field 1a) is required;

(B) patient's name (CMS-1500 (12/90), field 2) is required;

(C) patient's date of birth and gender (CMS-1500 (12/90), field 3) is required;

(D) subscriber's name (CMS-1500 (12/90), field 4) is required, if shown on the patient's ID card;

(E) patient's address (street or P.O. Box, city, state, ZIP) (CMS-1500 (12/90), field 5) is required;

(F) patient's relationship to subscriber (CMS-1500 (12/90), field 6) is required;

(G) subscriber's address (street or P.O. Box, city, state, ZIP) (CMS-1500 (12/90), field 7) is required, but physician or provider may enter "same" if the subscriber's address is the same as the patient's address required by subparagraph (E) of this paragraph;

(H) other insured's or enrollee's name (CMS-1500 (12/90), field 9) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(I) other insured's or enrollee's policy/group number (CMS-1500 (12/90), field 9a) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(J) other insured's or enrollee's date of birth (CMS-1500 (12/90), field 9b) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(K) other insured's or enrollee's plan name (employer, school, etc.) (CMS-1500 (12/90), field 9c) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element. If the field is required and the physician or provider is a facility-based radiologist, pathologist or anesthesiologist with no direct patient contact, the physician or provider must either enter the information or enter "NA" (not available) if the information is unknown;

(L) other insured's or enrollee's HMO or insurer name (CMS-1500 (12/90), field 9d) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(M) whether patient's condition is related to employment, auto accident, or other accident (CMS-1500 (12/90, field 10) is required, but facility-based radiologists, pathologists, or anesthesiologists shall enter "N" if the answer is "No" or if the information is not available;

(N) if the claim is a duplicate claim, a "D" is required; if the claim is a corrected claim, a "C" is required (CMS-1500 (12/90), field 10d);

(O) subscriber's policy number (CMS-1500 (12/90), field 11) is required;

(P) HMO or insurance company name (CMS-1500 (12/90), field 11c) is required;

(Q) disclosure of any other health benefit plans (CMS-1500 (12/90), field 11d) is required;

(i) if answered "yes", then:

(I) data elements specified in paragraph (2)(H) - (L) of this subsection are required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete the data elements in paragraph (2)(H) - (L) of this subsection;

(II) the data element specified in paragraph (2)(II) of this subsection is required when submitting claims to secondary payor HMOs or preferred provider carriers;

(ii) if answered "no", the data elements specified in paragraph (2)(H) - (L) of this subsection are not required if the physician or provider has on file a document signed within the past 12 months by the patient or authorized person stating that there is no other health care coverage; although the submission of the signed document is not a required data element, the physician or provider shall submit a copy of the signed document to the HMO or preferred provider carrier upon request;

(R) patient's or authorized person's signature or notation that the signature is on file with the physician or provider (CMS-1500 (12/90), field 12) is required;

(S) subscriber's or authorized person's signature or notation that the signature is on file with the physician or provider (CMS-1500 (12/90), field 13) is required;

(T) date of injury (CMS-1500 (12/90), field 14) is required, if due to an accident;

(U) when applicable, the physician or provider shall enter the name of the referring primary care physician, specialty physician, hospital, or other source (CMS-1500 (12/90) field 17); however, if there is no referral, the physician or provider shall enter "Self-referral" or "None";

(V) the physician or provider shall enter the ID Number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (12/90), field 17a); however, if there is no referral, the physician or provider shall enter "Self-referral" or "None";

(W) narrative description of procedure (CMS-1500 (12/90), field 19) is required when a physician or provider uses an unlisted or not classified procedure code or an NDC code for drugs;

(X) for diagnosis codes or nature of illness or injury (CMS-1500 (12/90), field 21), up to four diagnosis codes may be entered, but at least one is required (primary diagnosis must be entered first);

(Y) verification number (CMS-1500 (12/90), field 23) is required if services have been verified pursuant to §19.1724 of this title (relating to Verification). If no verification has been provided, a prior authorization number (CMS-1500 (12/90), field 23) is required when prior authorization is required and granted;

(Z) date(s) of service (CMS-1500 (12/90), field 24A) is required;

(AA) place of service code(s) (CMS-1500 (12/90), field 24B) is required;

(BB) procedure/modifier code (CMS-1500 (12/90), field 24D) is required;

(CC) diagnosis code by specific service (CMS-1500 (12/90), field 24E) is required with the first code linked to the applicable diagnosis code for that service in field 21;

(DD) charge for each listed service (CMS-1500 (12/90), field 24F) is required;

(EE) number of days or units (CMS-1500 (12/90), field 24G) is required;

(FF) physician's or provider's federal tax ID number (CMS-1500 (12/90), field 25) is required;

(GG) whether assignment was accepted (CMS-1500 (12/90), field 27) is required if assignment under Medicare has been accepted;

(HH) total charge (CMS-1500 (12/90), field 28) is required;

(II) amount paid (CMS-1500 (12/90), field 29) is required if an amount has been paid to the physician or provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber or by a primary plan in accordance with paragraph (2)(P) of this subsection and as required by subsection (d) of this section;

(JJ) signature of physician or provider or notation that the signature is on file with the HMO or preferred provider carrier (CMS-1500 (12/90), field 31) is required;

(KK) name and address of facility where services rendered (if other than home or office) (CMS-1500 (12/90), field 32) is required; and

(LL) physician's or provider's billing name, address, and telephone number is required, and the provider number (CMS-1500 (12/90), field 33) is required if the HMO or preferred provider carrier required provider numbers and gave notice of that requirement to physicians and providers prior to June 17, 2003.

(3) Required form and data elements for institutional providers for claims filed or re-filed on or after July 18, 2007. The UB-04 CMS-1450 and the data elements described in this paragraph are required for claims filed or re-filed by institutional providers on or after July 18, 2007. The UB-04 CMS-1450 must be completed in accordance with the special instructions applicable to the data elements as described by this paragraph for clean claims filed by institutional providers. Further, upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form UB-04 CMS-1450, an institutional provider may submit claims on UB-04 CMS-1450 prior to the mandatory use date described in this paragraph, subject to the required data elements set forth in this paragraph.

(A) provider's name, address, and telephone number (UB-04, field 1) is required;

(B) patient control number (UB-04, field 3a) is required;

(C) type of bill code (UB-04, field 4) is required and shall include a "7" in the fourth position if the claim is a corrected claim;

(D) provider's federal tax ID number (UB-04, field 5) is required;

(E) statement period (beginning and ending date of claim period) (UB-04, field 6) is required;

(F) patient's name (UB-04, field 8a) is required;

(G) patient's address (UB-04, field 9a - 9e) is required;

(H) patient's date of birth (UB-04, field 10) is required;

(I) patient's gender (UB-04, field 11) is required;

(J) date of admission (UB-04, field 12) is required for admissions, observation stays, and emergency room care;

(K) admission hour (UB-04, field 13) is required for admissions, observation stays, and emergency room care;

(L) type of admission (e.g., emergency, urgent, elective, newborn) (UB-04, field 14) is required for admissions;

(M) source of admission code (UB-04, field 15) is required;

(N) discharge hour (UB-04, field 16) is required for admissions, outpatient surgeries, or observation stays;

(O) patient-status-at-discharge code (UB-04, field 17) is required for admissions, observation stays, and emergency room care;

(P) condition codes (UB-04, fields 18 - 28) are required if the CMS UB-04 manual contains a condition code appropriate to the patient's condition;

(Q) occurrence codes and dates (UB-04, fields 31 - 34) are required if the CMS UB-04 manual contains an occurrence code appropriate to the patient's condition;

(R) occurrence span codes and from and through dates (UB-04, fields 35 and 36) are required if the CMS UB-04 manual contains an occurrence span code appropriate to the patient's condition;

(S) value code and amounts (UB-04, fields 39 - 41) are required for inpatient admissions. If no value codes are applicable to the inpatient admission, the provider may enter value code 01;

(T) revenue code (UB-04, field 42) is required;

(U) revenue description (UB-04, field 43) is required;

(V) HCPCS/Rates (UB-04, field 44) are required if Medicare is a primary or secondary payor;

(W) service date (UB-04, field 45) is required if the claim is for outpatient services;

(X) date bill submitted (UB-04, field 45, line 23) is required;

(Y) units of service (UB-04, field 46) are required;

(Z) total charge (UB-04, field 47) is required;

(AA) HMO or preferred provider carrier name (UB-04, field 50) is required;

(BB) prior payments-payor (UB-04, field 54) are required if payments have been made to the physician or provider by a primary plan as required by subsection (d) of this section;

(CC) for claims filed or re-filed on or after May 23, 2008, the NPI number of the billing provider (UB-04, field 56) is required if the billing provider is eligible for an NPI number;

(DD) other provider number (UB-04, field 57) is required if the HMO or preferred provider carrier, prior to June 17, 2003, required provider numbers and gave notice of that requirement to physicians and providers;

(EE) subscriber's name (UB-04, field 58) is required if shown on the patient's ID card;

(FF) patient's relationship to subscriber (UB-04, field 59) is required;

(GG) patient's/subscriber's certificate number, health claim number, ID number (UB-04, field 60) is required if shown on the patient's ID card;

(HH) insurance group number (UB-04, field 62) is required if a group number is shown on the patient's ID card;

(II) verification number (UB-04, field 63) is required if services have been verified pursuant to §19.1724 of this title. If no verification has been provided, treatment authorization codes (UB-04, field 63) are required when authorization is required and granted;

(JJ) principal diagnosis code (UB-04, field 67) is required;

(KK) diagnoses codes other than principal diagnosis code (UB-04, fields 67A - 67Q) are required if there are diagnoses other than the principal diagnosis;

(LL) admitting diagnosis code (UB-04, field 69) is required;

(MM) principal procedure code (UB-04, field 74) is required if the patient has undergone an inpatient or outpatient surgical procedure;

(NN) other procedure codes (UB-04, fields 74 - 74e) are required as an extension of subparagraph (MM) of this paragraph if additional surgical procedures were performed;

(OO) attending physician NPI number (UB-04, field 76) is required on or after May 23, 2008, if attending physician is eligible for an NPI number; and

(PP) attending physician ID (UB-04, field 76, qualifier portion) is required.

(4) Required form and data elements for institutional providers for claims filed or re-filed before July 18, 2007. The UB-92 CMS-1450 and the data elements described in this paragraph are required for claims filed or re-filed by institutional providers before July 18, 2007. The UB-92 CMS-1450 must be completed in accordance with the special instructions applicable to the data element as described in this paragraph for clean claims filed by institutional providers. However, upon notification that an HMO or preferred provider carrier will accept claims filed or re-filed on form UB-04 CMS-1450, an institutional provider may submit claims on form UB-04 CMS-1450 prior to the subsection (b)(3) mandatory use date, subject to the subsection (b)(3) required data elements.

(A) provider's name, address and telephone number (UB-92, field 1) is required;

(B) patient control number (UB-92, field 3) is required;

(C) type of bill code (UB-92, field 4) is required and shall include a "7" in the third position if the claim is a corrected claim;

(D) provider's federal tax ID number (UB-92, field 5) is required;

(E) statement period (beginning and ending date of claim period) (UB-92, field 6) is required;

(F) covered days (UB-92, field 7) is required if Medicare is a primary or secondary payor;

(G) noncovered days (UB-92, field 8) is required if Medicare is a primary or secondary payor;

(H) coinsurance days (UB-92, field 9) is required if Medicare is a primary or secondary payor;

(I) lifetime reserve days (UB-92, field 10) is required if Medicare is a primary or secondary payor and the patient was an inpatient;

(J) patient's name (UB-92, field 12) is required;

(K) patient's address (UB-92, field 13) is required;

(L) patient's date of birth (UB-92, field 14) is required;

(M) patient's gender (UB-92, field 15) is required;

(N) patient's marital status (UB-92, field 16) is required;

(O) date of admission (UB-92, field 17) is required for admissions, observation stays, and emergency room care;

(P) admission hour (UB-92, field 18) is required for admissions, observation stays, and emergency room care;

(Q) type of admission (e.g., emergency, urgent, elective, newborn) (UB-92, field 19) is required for admissions;

(R) source of admission code (UB-92, field 20) is required;

(S) discharge hour (UB-92, field 21) is required for admissions, outpatient surgeries, or observation stays;

(T) patient-status-at-discharge code (UB-92, field 22) is required for admissions, observation stays, and emergency room care;

(U) condition codes (UB-92, fields 24 - 30) are required if the CMS UB-92 manual contains a condition code appropriate to the patient's condition;

(V) occurrence codes and dates (UB-92, fields 32 - 35) are required if the CMS UB-92 manual contains an occurrence code appropriate to the patient's condition;

(W) occurrence span code, from and through dates (UB-92, field 36), are required if the CMS UB-92 manual contains an occurrence span code appropriate to the patient's condition;

(X) value code and amounts (UB-92, fields 39-41) are required for inpatient admissions. If no value codes are applicable to the inpatient admission, the provider may enter value code 01;

(Y) revenue code (UB-92, field 42) is required;

(Z) revenue description (UB-92, field 43) is required;

(AA) HCPCS/Rates (UB-92, field 44) are required if Medicare is a primary or secondary payor;

(BB) Service date (UB-92, field 45) is required if the claim is for outpatient services;

(CC) units of service (UB-92, field 46) are required;

(DD) total charge (UB-92, field 47) is required;

(EE) HMO or preferred provider carrier name (UB-92, field 50) is required;

(FF) provider number (UB-92, field 51) is required if the HMO or preferred provider carrier, prior to June 17, 2003, required provider numbers and gave notice of that requirement to physicians and providers.

(GG) prior payments-payor and patient (UB-92, field 54) are required if payments have been made to the physician or provider by the patient or another payor or subscriber, on behalf of the patient or subscriber, or by a primary plan as required by subsection (d) of this section;

(HH) subscriber's name (UB-92, field 58) is required if shown on the patient's ID card;

(II) patient's relationship to subscriber (UB-92, field 59) is required;

(JJ) patient's/subscriber's certificate number, health claim number, ID number (UB-92, field 60) is required if shown on the patient's ID card;

(KK) insurance group number (UB-92, field 62) is required if a group number is shown on the patient's ID card;

(LL) verification number (UB-92, field 63) is required if services have been verified pursuant to §19.1724 of this title. If no verification has been provided, treatment authorization codes (UB-92, field 63) are required when authorization is required and granted;

(MM) principal diagnosis code (UB-92, field 67) is required;

(NN) diagnoses codes other than principal diagnosis code (UB-92, fields 68 - 75) are required if there are diagnoses other than the principal diagnosis;

(OO) admitting diagnosis code (UB-92, field 76) is required;

(PP) procedure coding methods used (UB-92, field 79) is required if the CMS UB-92 manual indicates a procedural coding method appropriate to the patient's condition;

(QQ) principal procedure code (UB-92, field 80) is required if the patient has undergone an inpatient or outpatient surgical procedure;

(RR) other procedure codes (UB-92, field 81) are required as an extension of subparagraph (QQ) of this paragraph if additional surgical procedures were performed;

(SS) attending physician ID (UB-92, field 82) is required;

(TT) signature of provider representative, electronic signature or notation that the signature is on file with the HMO or preferred provider carrier (UB-92, field 85) is required; and

(UU) date bill submitted (UB-92, field 86) is required.

(c) Required data elements-dental claims. The data elements described in this subsection are required as indicated and must be completed or provided in accordance with the special instructions applicable to the data elements for non-electronic clean claims filed by dental providers with HMOs.

(1) Patient's name is required;

(2) Patient's address is required;

(3) Patient's date of birth is required;

(4) Patient's gender is required;

(5) Patient's relationship to subscriber is required;

(6) Subscriber's name is required;

(7) Subscriber's address is required, but provider may enter "same" if the subscriber's address is the same as the patient's address required by paragraph (2) of this subsection;

(8) Subscriber's date of birth is required, if shown on the patient's ID card;

(9) Subscriber's gender is required;

(10) Subscriber's identification number is required, if shown on the patient's ID card;

(11) Subscriber's plan/group number is required, if shown on the patient's ID card;

(12) HMO's name is required;

(13) HMO's address is required;

(14) Disclosure of any other plan providing dental benefits is required and shall include a "no" if the patient is not covered by another plan providing dental benefits. If the patient does have other coverage, the provider shall indicate "yes" and the elements in paragraphs (15) - (20) of this subsection are required unless the provider submits with the claim documented proof to the HMO that the provider has made a good faith but unsuccessful attempt to obtain from the enrollee any of the information needed to complete the data elements;

(15) Other insured's or enrollee's name is required in accordance with the response to and requirements of paragraph (14) of this subsection;

(16) Other insured's or enrollee's date of birth is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(17) Other insured's or enrollee's gender is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(18) Other insured's or enrollee's identification number is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(19) Patient's relationship to other insured or enrollee is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(20) Name of other HMO or insurer is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(21) Verification or preauthorization number is required, if a verification or preauthorization number was issued by an HMO to the provider;

(22) Date(s) of service(s) or procedure(s) is required;

(23) Area of oral cavity is required, if applicable;

(24) Tooth system is required, if applicable;

(25) Tooth number(s) or letter(s) are required, if applicable;

(26) Tooth surface is required, if applicable;

(27) Procedure code for each service is required;

(28) Description of procedure for each service is required, if applicable;

(29) Charge for each listed service is required;

(30) Total charge for the claim is required;

(31) Missing teeth information is required, if a prosthesis constitutes part of the claim. A provider that provides information for this element shall include the tooth number(s) or letter(s) of the missing teeth;

(32) Notification of whether the services were for orthodontic treatment is required. If the services were for orthodontic treatment, the elements in paragraphs (34) and (35) of this subsection are required;

(33) Date of orthodontic appliance placement is required, if applicable;

(34) Months of orthodontic treatment remaining is required, if applicable;

(35) Notification of placement of prosthesis is required, if applicable. If the services included placement of a prosthesis, the element in paragraph (36) of this subsection is required;

(36) Date of prior prosthesis placement is required, if applicable;

(37) Name of billing provider is required;

(38) Address of billing provider is required;

(39) Billing provider's provider identification number is required, if applicable;

(40) Billing provider's license number is required;

(41) Billing provider's social security number or federal tax identification number is required;

(42) Billing provider's telephone number is required; and

(43) Treating provider's name and license number are required if the treating provider is not the billing provider.

(d) Coordination of benefits or non-duplication of benefits. If a claim is submitted for covered services or benefits in which coordination of benefits pursuant to §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits) and §11.511(1) of this title (relating to Optional Provisions) is necessary, the amount paid as a covered claim by the primary plan is a required element of a clean claim for purposes of the secondary plan's processing of the claim and CMS-1500 (08/05), field 29; CMS-1500 (12/90), field 29; UB-04, field 54; or UB-92, field 54, as applicable, must be completed pursuant to subsection (b)(1)(KK), (2)(II), (3)(BB), and (4)(GG) of this section. If a claim is submitted for covered services or benefits in which non-duplication of benefits pursuant to §3.3053 of this title (relating to Non-duplication of Benefits Provision) is an issue, the amounts paid as a covered claim by all other valid coverage is a required element of a clean claim and CMS-1500 (08/05), field 29; CMS-1500 (12/90), field 29; UB-04, field 54; or UB-92, field 54, as applicable, must be completed pursuant to subsection (b)(1)(KK), (2)(II), (3)(BB), and (4)(GG) of this section. If a claim is submitted for covered services or benefits and the policy contains a variable deductible provision as set forth in §3.3074(a)(4) of this title (relating to Minimum Standards for Major Medical Expense Coverage), the amount paid as a covered claim by all other health insurance coverages, except for amounts paid by individually underwritten and issued hospital confinement indemnity, specified disease, or limited benefit plans of coverage, is a required element of a clean claim and CMS-1500 (08/05), field 29; CMS-1500 (12/90), field 29; UB-04, field 54; or UB-92, field 54, as applicable, must be completed pursuant to subsection (b)(1)(KK), (2)(II), (3)(BB), and (4)(GG) of this section. Notwithstanding these requirements, an HMO or preferred provider carrier may not require a physician or provider to investigate coordination of other health benefit plan coverage.

(e) A physician or provider submits an electronic clean claim by submitting a claim using the applicable format that complies with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides and trading partner agreements.

(f) If a physician or provider submits an electronic clean claim that requires coordination of benefits pursuant to §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits) or §11.511(1) of this title (relating to Optional Provisions), the HMO or preferred provider carrier processing the claim as a secondary payor shall rely on the primary payor information submitted on the claim by the physician or provider. The primary payor may submit primary payor information electronically to the secondary payor using the ASC X12N 837 format and in compliance with federal laws related to electronic health care claims, including applicable implementation guides, companion guides and trading partner agreements.

(g) Format of elements. The elements of a clean claim set forth in subsections (b), (c), (d), (e) and (f), if applicable, of this section must be complete, legible and accurate.

(h) Additional data elements or information. The submission of data elements or information on or with a claim form by a physician or provider in addition to those required for a clean claim under this section shall not render such claim deficient.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702585
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 11, 2007
Proposal publication date: January 19, 2007
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §101.8, §101.10

The Texas County and District Retirement System adopts amendments to §101.8 and §101.10, concerning the reporting of retirement benefits approved by the director. The amendments are adopted without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2528).

The adopted amendments change the basis for reporting benefits to the board from an automatic action to an action based upon the request of the chairman or vice-chairman.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules and perform reasonable activities necessary or desirable for the efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 2007.

TRD-200702588
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: July 12, 2007
Proposal publication date: May 11, 2007
For further information, please call: (512) 637-3230

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CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.4

The Texas County and District Retirement System adopts an amendment to §107.4, concerning the amortization period for the funding of benefits by a subdivision participating under the Annually Determined Contribution Rate Plan. The amendment is adopted without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2529).

The adopted amendment changes the amortization period for an unfunded actuarial accrued liability from an open 20-year period to a closed 15-year period. The amortization period for an overfunded actuarial accrued liability remains unchanged as an open 30-year period.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §844.703(f), which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt amortization periods and establish criteria for renewing, extending, or shortening any closed period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 2007.

TRD-200702589
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: July 12, 2007
Proposal publication date: May 11, 2007
For further information, please call: (512) 637-3230

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code, §217.1, Minimum Standards for Initial Licensure. This adoption is without changes to the proposed text as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1842) and will not be republished.

Adopted amendments to subsection (a)(11)(C) and (a)(13)(C) are added to allow appointees more than 180 days while attending a law enforcement academy that exceeds the 180-day requirement for medical and psychological evaluations. Subsection (o) is added to reflect effective date of change.

The Commission has determined that, for each year of the first five years the section as adopted will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that, for the each year of the first five years the section as adopted will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the adopted section.

The Commission has determined that, for each year of the first five years the section as adopted will be in effect, there will be a positive benefit to law enforcement academies, agencies, and appointees who invest monies for these examinations for the examinations.

The Commission has determined that, for each year of the first five years the section as adopted will be in effect, there will be no additional cost to individuals required to comply with the rules as adopted.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701.306, Psychological and Physical Examination.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 19, 2007.

TRD-200702525

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: July 9, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 936-7717

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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code, by amending §221.9, Standardized Field Sobriety Testing Practitioner (SFST). This adoption is without changes to the proposed text as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1843) and will not be republished.

Adopted amendments to subsections (a) and (b) are added for additional proficiency certificate requirements recommended in part by the National Highway Transportation Safety Administration (NHTSA) assessment of the Texas SFST Program. These adopted changes meet or exceed the minimum standards established by the Commission. Subsection (c) is added to reflect the effective date for these adopted changes.

The Commission has determined that, for each year of the first five years the section as adopted will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that, for each year of the first five years the section as adopted will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the adopted section.

The Commission has determined that, for each year of the first five years the section as adopted will be in effect, there will be a positive benefit to the public by allowing individuals that complete that NHTSA SFST Practitioner curriculum training that meets or exceeds the minimum standards established by the Commission, to receive this proficiency certificate. This would also allow the Commission to comply with verbiage set out in Emerson v. State.

The Commission has determined that, for each year of the first five years the section as adopted will be in effect, there will be cost to individuals for the proficiency certificate application fee.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.401, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 19, 2007.

TRD-200702526

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: July 9, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 936-7717

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§19.201, 19.204, 19.209, 19.210, 19.214, and 19.2106; and new §19.1919 and §19.1925 in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. The adopted amendments to §19.204 and §19.2106 and new §19.1925 are adopted with changes to the proposed text published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10253). The amendments to §§19.201, 19.209, 19.210, and 19.214; and new §19.1919 are adopted without changes to the proposed text.

The amendments and new sections are adopted to define financial solvency, minimum standards of financial condition, and a significant change in financial condition, to assist DADS in determining the financial viability of a nursing facility. The long-term services industry experienced a rise in bankruptcy filings in the late 1990s. In response, the Texas Legislature granted DADS authority to address financial solvency in Texas Health and Safety Code, §242.032(c) and (e) and §242.074; and this statutory language was incorporated into DADS' rule base. However, DADS rules did not define financial solvency, minimum standards of financial condition, or a significant change in financial condition. The amendments and new sections are adopted to help DADS staff obtain and analyze financial information from nursing facility applicants and license holders and to take appropriate licensure actions that will help ensure the health and safety of residents of nursing facilities in Texas.

The amendments are also adopted to replace references to the Texas Department of Human Services (DHS) with references to DADS, update rule cross-references, and update the section name for DADS' licensing section.

DADS received written comments from the Texas Health Care Association. A summary of the comments and the agency's responses follows.

Comment: Concerning §19.214, the commenter stated that DADS' focus for an initial or renewal license should be whether a nursing facility has the financial resources to ensure the delivery of essential care and services. The commenter stated that the failure of a nursing facility to notify DADS of an adverse change in financial condition, when viewed alone, should not be the basis to deny a license or renewal of a license.

Response: Health and Safety Code, §242.074, requires a facility to notify DADS of a significant change in the facility's financial position, cash flow, or results of operation that could adversely affect the facility's delivery of essential services, including nursing services, dietary services, and utilities to residents of the facility. Under Health and Safety Code, §242.061, DADS may deny, suspend, or revoke a license if DADS finds that the applicant, the license holder, or any other person described by §242.032(d) has failed to comply with §242.074. Under §242.061(a)(3), the Texas Legislature has explicitly given DADS the authority to deny an application for a license based on a facility's failure to comply with the notification requirements in §242.074. The list in proposed §19.1925(b) provides specific examples of significant adverse changes in financial condition that must be reported. If a facility does not report one of these examples, it could be a basis to deny a license or renewal of a license under §242.061 as a failure to comply with §242.074. The agency did not change the proposed rule in response to the comment.

Comment: Concerning §19.1925(b), the commenter asked DADS to modify the proposed language so that the focus of the rule is on the license holder's ability to deliver essential services. The commenter stated that, when viewed alone, the examples in the proposed rule do not necessarily mean that a license holder is unable to deliver essential services. The commenter asserted that mandating a license holder to notify DADS each time one of the events listed in the examples occurs fails to recognize business realities that often occur in any profession or industry.

Response: Regarding the commenter's concerns that the examples listed in §19.1925(b), when viewed alone, may not necessarily result in an adverse financial condition, the agency responds that the proposed rule language at §19.1925(d) addresses this concern and makes part of the notice requirement that the nursing facility provide information regarding the impact to essential care and services, and actions the facility has taken. This information is for DADS' review so DADS can consider the materiality and actual impact on the nursing facility's ability to deliver essential services. The agency did not change the proposed rule in response to the comment.

Comment: Concerning §19.1925(b)(1), (2), (4), and (10), the commenter requested that the monetary examples have a dollar threshold. The commenter asserted that contracting disputes with a vendor, a bank's refusal to honor a check, or the license holder's failure to pay taxes could be for reasons that have no impact on the delivery of essential services or the license holder's funds.

Response: The agency has added dollar thresholds to the monetary examples in §19.1925(b)(1), (2), (4), and (10).

Comment: The commenter stated that the bankruptcy and receiver examples in §19.1925(b)(5) - (7) can have a positive impact on the delivery of essential services and that bankruptcy protections allow an entity time to restructure debt in order to meet obligations, which in turn improves the delivery of essential services.

Response: The agency did not change the proposed language in response to the comment. However, the agency revised the proposed language in §19.1925(b)(5) to more accurately reflect the process by which a voluntary or involuntary bankruptcy petition is filed.

Comment: The commenter disagreed with the proposed example in §19.1925(b)(8) and asserted that failure to meet loan agreement debt covenants does not necessarily imply financial difficulties.

Response: The agency has added qualifying language at §19.1925(b)(8) to establish conditions under which a facility's inability to meet the conditions of a loan or debt covenant would be an issue of financial concern and would require notification to DADS.

Comment: The commenter requested that §19.1925(b)(9) be removed and stated that notice of intent to litigate is given for many types of litigation and the risk to delivery of essential services is difficult to evaluate at the onset.

Response: The agency has removed the provision requiring a facility to notify DADS if the facility receives a notice of intent to litigate. The removal of §19.1925(b)(9) caused the agency to renumber proposed §19.1925(b)(10) as §19.1925(b)(9).

In addition, the agency:

(1) in §19.204(c), changed "requested by DADS" to "DADS requests" and changed "within 30 days of the request" to "within 30 days after the request" to clarify the required time frame;

(2) in §19.1925(a), changed "April 1, 2008" to "December 1, 2008" to allow time for the development of a new business process and for employee training;

(3) revised §19.1925(f) to use language about requests for additional information that is consistent with the language in §19.204(c); and

(4) in §19.2106, changed "financial conditions" to "financial condition" in subsection (a)(3) and changed "informal reconsideration" to "opportunity to show compliance" in subsection (c) to correct terminology.

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §§19.201, 19.204, 19.209, 19.210, 19.214

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

§19.204. Application Requirements.

(a) Applications. All applications must be made on forms prescribed by and available from DADS.

(1) Each application must be completed in accordance with DADS instructions, and it must be signed and notarized.

(2) Changes to information required in the application must be reported to DADS, as required by §19.1918 of this title (relating to Disclosure of Ownership).

(b) General information required. An applicant must file with DADS an application which contains:

(1) for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds, must be disclosed to DADS;

(2) a certificate of good standing issued by the Comptroller of Public Accounts; and

(3) for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership; and

(4) for a facility which advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement, using the departmental form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.

(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).

(B) The disclosure statement must contain the following information:

(i) the facility's philosophy of care for residents with Alzheimer's disease and related disorders;

(ii) the preadmission, admission, and discharge process;

(iii) resident assessment, care planning, and implementation of the care plan;

(iv) staffing patterns, such as resident to staff ratios, and staff training;

(v) the physical environment of the facility;

(vi) resident activities;

(vii) program charges;

(viii) systems for evaluation of the facility's program;

(ix) family involvement in resident care; and

(x) the telephone number for DADS' toll-free complaint line.

(C) The disclosure statement must be updated and submitted to DADS as needed to reflect changes in special services for residents with Alzheimer's disease or a related condition.

(c) Requested information. An applicant or license holder must provide any information DADS requests within 30 days after the request.

(d) Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702580
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-3734

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SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1919, §19.1925

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

§19.1925. Financial Condition.

(a) Effective December 1, 2008, minimum standards of financial condition require the applicant or license holder to have sufficient financial resources to:

(1) satisfy obligations at the time they come due; and

(2) ensure at all times the delivery of essential care and services, such as nursing or dietary services, or utilities.

(b) A license holder must notify DADS of significant adverse changes in financial condition, which include changes in financial position, cash flow, results of operation, or other events that could adversely affect the delivery of essential care and services, such as nursing or dietary services, or utilities. The following are examples of significant adverse changes in financial condition that must be reported:

(1) The license holder, operator, administrator, manager, or other controlling person receives notice that a judgment or tax lien of at least $50,000 has been filed, recorded, or levied against the facility or any of the assets of the facility or the license holder and the judgment or tax lien is not satisfied, or an appropriate extension has not been obtained, within three working days after receipt of the notice.

(2) A financial institution refuses to honor facility-operation-related checks or other financial instruments issued by the license holder, operator, administrator, manager, or other controlling person or agent of the license holder, operator, administrator, manager, or other controlling person and:

(A) the cumulative amounts of the checks or financial instruments are $50,000 or more; and

(B) the checks or financial instruments are not honored or replaced to the satisfaction of the holders of the instruments within five working days after the holders have notified the license holder, operator, administrator, manager, or the person authorized to issue the instrument of the dishonored items.

(3) The facility fails to maintain the facility's utilities or a sufficient quantity of supplies, including nursing, dietary, pharmaceutical, or other care and service supplies, to meet the needs of the residents.

(4) The license holder, operator, administrator, manager, or other controlling person fails to make timely payments of any facility-related tax of at least $10,000 and fails to satisfy such tax within five working days after the date the tax becomes due.

(5) The license holder, operator, administrator, manager, or other controlling person files a voluntary bankruptcy petition, or a creditor files an involuntary bankruptcy petition against the license holder or controlling person, under the United States Code or any other laws of the United States.

(6) A court appoints a bankruptcy trustee for the facility.

(7) A person seeking appointment of a receiver for the facility files a petition in any jurisdiction.

(8) The license holder, operator, administrator, manager, or other controlling person is unable to meet conditions of a facility-operation-related loan or debt covenant unless the loan or debt covenant has been waived, and that inability leads to:

(A) the imposition of a fine or penalty;

(B) restructuring;

(C) a change in terms or conditions of the loan or debt covenant; or

(D) a recall by the issuing entity.

(9) The license holder, operator, administrator, manager, or other controlling person is delinquent on more than $50,000 of facility-related contractual obligations or vendor contracts and has not cured the delinquency within five working days after receipt of notice from the creditor or creditors to pay the debt.

(c) The license holder must notify DADS in writing of a significant adverse change in its financial condition as required by subsection (b) of this section within 72 hours after the license holder becomes aware of or should have become aware of the change.

(d) The license holder's notice required by subsection (b) of this section must include a description of:

(1) the specific significant adverse change in financial condition;

(2) how the significant adverse change in financial condition affects the license holder's ability to deliver essential care and services; and

(3) the actions the license holder has taken to address the significant adverse change in financial condition.

(e) The license holder must fax the notice required in subsection (b) of this section to (512) 438-2730 or (512) 438-2728, and the notice must be kept on file with a copy of the fax confirmation.

(f) The license holder must provide any other information DADS requests to substantiate continued compliance with the requirements of this section within 30 days after the request.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702582
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-3734

SUBCHAPTER V. ENFORCEMENT
DIVISION 2. LICENSING REMEDIES

40 TAC §19.2106

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

§19.2106. Revocation of a License.

(a) DADS may revoke a facility's license when the license holder, or any other person described in §19.201(f) of this title (relating to Criteria for Licensing), has:

(1) violated the requirements of the Health and Safety Code, Chapter 242, or the rules adopted under that chapter, in either a repeated or substantial manner;

(2) committed any act described in §19.2112(a)(2) - (6) of this title (relating to Administrative Penalties); or

(3) failed to notify DADS of a significant adverse change in financial condition, as required under §19.1925(b) of this title (relating to Financial Condition).

(b) Revocation of a license may occur simultaneously with any other enforcement provision available to DADS.

(c) The license holder will be notified by certified mail of DADS' intent to revoke the license, including the facts or conduct alleged to warrant the revocation, with a copy being sent to the facility. The license holder has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §19.215 of this title (relating to Opportunity to Show Compliance). If the license holder requests an opportunity to show compliance, DADS gives the license holder a written affirmation or reversal of the proposed action.

(d) The license holder will be notified by certified mail of DADS' revocation of the facility's license, with a copy being sent to the facility. The license holder has 15 days from receipt of the certified mail notice to request a hearing in accordance with the Health and Human Services Commission's formal hearing procedures in 1 TAC, Chapter 357, Subchapter I. The revocation will take effect when the

deadline for appeal of the revocation passes, unless the license holder appeals the revocation. If the license holder appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter. Upon revocation, the license must be returned to DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702583
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY

43 TAC §57.48

The Automobile Theft Prevention Authority (ATPA) adopts an amendment to 43 TAC §57.48, concerning Motor Vehicle Years of Insurance Calculations, without changes to the proposed text as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1899). The text of the adopted rule as amended will not be republished. Subsection (b) of §57.48 is amended to reflect the correct address of the Texas Comptroller of Public Accounts, the entity that provides forms and instructions to insurers for filing ATPA statutory fees. The changed address is the location where insurers may go to obtain instructions and forms.

No written comments regarding adoption of the amendment were received.

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties.

The following are the statutes, articles, or codes affected by the amendments: §57.48; Article 4413(37), §6(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2007.

TRD-200702579
Susan Sampson
Director
Automobile Theft Prevention Authority
Effective date: July 11, 2007
Proposal publication date: March 30, 2007
For further information, please call: (512) 374-5101

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Building and Procurement Commission

Rule Transfer

Through the enactment of House Bill 3560, 80th Legislature, 2007, certain procurement duties and powers of the Texas Building and Procurement Commission are transferred to the Comptroller of Public Accounts.

House Bill 3560 renames the Texas Building and Procurement Commission as the Texas Facilities Commission and retains its powers and duties that relate to buildings and facilities, surplus and salvage property and child care services for state employees. The bill transfers all other duties and powers of the Texas Building and Procurement Commission to the Comptroller of Public Accounts. Under the bill, rules of the Texas Building and Procurement Commission that are related to an activity transferred by the bill to the Comptroller of Public Accounts continue in effect as the rules of the Comptroller of Public Accounts until superseded by an act of the Comptroller of Public Accounts.

The rules governing the duties being transferred are currently located under Title 1, Part 5, Chapter 111, Subchapter B; Chapter 113; Chapter 114; Chapter 117; and Chapter 125 of the *Texas Administrative Code*. These rules are transferred and reorganized under Title 34, Part 1, Chapter 20 of the *Texas Administrative Code*.

This transfer is effective September 1, 2007.

Please refer to the conversion chart that outlines the rule transfer from the Texas Building and Procurement Commission to the Comptroller of Public Accounts.

Figure: 1 TAC Chapter 111

Figure: 1 TAC Chapter 113

Figure: 1 TAC Chapter 114

Figure: 1 TAC Chapter 117

Figure: 1 TAC Chapter 125

TRD-200702592

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Comptroller of Public Accounts

Rule Transfer

Through the enactment of House Bill 3560, 80th Legislature, 2007, certain procurement duties and powers of the Texas Building and Procurement Commission are transferred to the Comptroller of Public Accounts.

House Bill 3560 renames the Texas Building and Procurement Commission as the Texas Facilities Commission and retains its powers and duties that relate to buildings and facilities, surplus and salvage property and child care services for state employees. The bill transfers all other duties and powers of the Texas Building and Procurement Commission to the Comptroller of Public Accounts. Under the bill, rules of the Texas Building and Procurement Commission that are related to an activity transferred by the bill to the Comptroller of Public Accounts continue in effect as the rules of the Comptroller of Public Accounts until superseded by an act of the Comptroller of Public Accounts.

The rules governing the duties being transferred are currently located under Title 1, Part 5, Chapter 111, Subchapter B; Chapter 113; Chapter 114; Chapter 117; and Chapter 125 of the *Texas Administrative Code*. These rules are transferred and reorganized under Title 34, Part 1, Chapter 20 of the *Texas Administrative Code*.

This transfer is effective September 1, 2007.

Please refer to the conversion chart that outlines the rule transfer from the Texas Building and Procurement Commission to the Comptroller of Public Accounts.

Figure: 1 TAC Part 5, Chapter 111, Subchapter B

Figure: 1 TAC Part 5, Chapter 113

Figure: 1 TAC Part 5, Chapter 114

Figure: 1 TAC Part 5, Chapter 117

Figure: 1 TAC Part 5, Chapter 125

TRD-200702591

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Figure: 1 TAC Chapter 111

Current Rules from Title 1, Part 5 Texas Building and Procurement Commission Chapter 111. Executive Administration Division			**Transferred to Title 34, Part 1 Comptroller of Public Accounts Chapter 20. State Procurement and Program Support Services Office**		
Subchapter	**Section**	**Heading**	**Subchapter**	**Section**	**Heading**
B		**Historically Underutilized Business Program**	**B**		**Historically Underutilized Business Program**
	§111.11	Policy and Purpose		§20.11	Policy and Purpose
	§111.12	Definitions		§20.12	Definitions
	§111.13	Annual Procurement Utilization Goals		§20.13	Annual Procurement Utilization Goals
	§111.14	Subcontracts		§20.14	Subcontracts
	§111.15	Agency Planning Responsibilities		§20.15	Agency Planning Responsibilities
	§111.16	State Agency Reporting Requirements		§20.16	State Agency Reporting Requirements
	§111.17	Certification Process		§20.17	Certification Process
	§111.18	Protests		§20.18	Protests
	§111.19	Recertification		§20.19	Recertification
	§111.20	Revocation		§20.20	Revocation
	§111.21	Certification and Compliance Reviews		§20.21	Certification and Compliance Reviews
	§111.22	Texas Historically Underutilized Business Certification Directory		§20.22	Texas Historically Underutilized Business Certification Directory
	§111.24	Program Review		§20.24	Program Review
	§111.25	Memorandum of Understanding between the Texas Department of Economic Development and the Texas Building and Procurement Commission		§20.25	Memorandum of Understanding between the Texas Department of Economic Development and the Texas Building and Procurement Commission
	§111.26	HUB Coordinator Responsibilities		§20.26	HUB Coordinator Responsibilities
	§111.27	HUB Forum Programs for State Agencies		§20.27	HUB Forum Programs for State Agencies
	§111.28	Mentor Protege Program		§20.28	Mentor Protege Program

Figure: 1 TAC Chapter 113

Current Rules from Title 1, Part 5 Texas Building and Procurement Commission Chapter 113. Procurement Division			Transferred to Title 34, Part 1 Comptroller of Public Accounts Chapter 20. State Procurement and Program Support Services Office		
Subchapter	**Section**	**Heading**	**Subchapter**	**Section**	**Heading**
A		**Purchasing**	**C**		**Procurement**
	§113.1	General Purchasing Provisions		§20.31	General Purchasing Provisions
	§113.2	Definitions		§20.32	Definitions
	§113.3	Requisitions and Specifications; Proprietary Purchases; Lease Purchases		§20.33	Requisitions and Specifications; Proprietary Purchases; Lease Purchases
	§113.4	Centralized Master Bidders List		§20.34	Centralized Master Bidders List
	§113.5	Bid Submission, Bid Opening, and Tabulation		§20.35	Bid Submission, Bid Opening, and Tabulation
	§113.6	Bid Evaluation and Award		§20.36	Bid Evaluation and Award
	§113.7	Competitive Sealed Proposals		§20.37	Competitive Sealed Proposals
	§113.8	Preferences		§20.38	Preferences
	§113.9	Contract Administration		§20.39	Contract Administration
	§113.10	Term Contracts		§20.40	Term Contracts
	§113.11	Delegated Purchases		§20.41	Delegated Purchases
	§113.13	Texas Department of Criminal Justice Purchases		§20.43	Texas Department of Criminal Justice Purchases
	§113.16	Multiple Award Contract Procedure		§20.46	Multiple Award Contract Procedure
	§113.17	Multiple Award Schedule		§20.47	Multiple Award Schedule
	§113.18	Auditing of Purchase Documents and Payment Vouchers		§20.48	Auditing of Purchase Documents and Payment Vouchers
	§113.19	Catalog Information Systems Vendor		§20.49	Catalog Information Systems Vendor
	§113.20	Group Purchasing Programs		§20.50	Group Purchasing Programs
	§113.21	Reverse Auction		§20.51	Reverse Auction
	§113.22	Advisory Committees		§20.52	Advisory Committees
B		**Purchase of Alternative Fuel Vehicles**			
	§113.25	Purchase of Motor Vehicles		§20.55	Purchase of Motor Vehicles
C		**Specification**			
	§113.33	Selection of Items for Development of Texas Uniform Standards and Specifications		§20.63	Selection of Items for Development of Texas Uniform Standards and Specifications
	§113.34	Development of Texas Uniform Standards and Specifications		§20.64	Development of Texas Uniform Standards and Specifications
D		**Inspection**			
	§113.51	General		§20.71	General
	§113.52	Inspection and/or Testing		§20.72	Inspection and/or Testing
	§113.54	Testing Facilities and/or Laboratories		§20.74	Testing Facilities and/or Laboratories
	§113.55	Cost of Testing		§20.75	Cost of Testing
	§113.56	Assessing and Collecting Damages and Testing Costs		§20.76	Assessing and Collecting Damages and Testing Costs
E		**Cooperative Purchasing Program**			
	§113.81	General		§20.81	General
	§113.85	Participation in Cooperative Purchasing		§20.85	Participation in Cooperative Purchasing
	§113.87	Responsibilities of Qualified Ordering Entities		§20.87	Responsibilities of Qualified Ordering Entities

F		**Vendor Performance and Debarment Program**			
	§113.101	Purpose and Applicability		§20.101	Purpose and Applicability
	§113.102	Definitions		§20.102	Definitions
	§113.103	Protecting the State's Interest: Failure to Meet Specifications		§20.103	Protecting the State's Interest: Failure to Meet Specifications
	§113.104	Protecting the State's Interest: Failure to Meet Contract Requirements		§20.104	Protecting the State's Interest: Failure to Meet Contract Requirements
	§113.105	Debarment		§20.105	Debarment
	§113.106	Procedures for Investigations and Debarment		§20.106	Procedures for Investigations and Debarment
	§113.107	Request for Review		§20.107	Request for Review
	§113.108	Vendor Performance Tracking System		§20.108	Vendor Performance Tracking System
G		**Buying Under Contract Established by an Agency Other than the Texas Building and Procurement Commission**			
	§113.125	Buying under Contract Established by an Agency other than Commission		§20.125	Buying under Contract Established by an Agency other than Commission
	§113.126	Purchasing from Interstate Compacts and Cooperative Agreements		§20.126	Purchasing from Interstate Compacts and Cooperative Agreements
H		**State Agency Procurements of Recycled, Remanufactured or Environmentally Sensitive Commodities or Services**			
	§113.135	State Agency Procurements of Recycled, Remanufactured or Environmentally Sensitive Commodities or Services		§20.135	State Agency Procurements of Recycled, Remanufactured or Environmentally Sensitive Commodities or Services
I		**Special Purchases**			
	§113.148	Purchase Price of Commemorative Items		§20.148	Purchase Price of Commemorative Items
J		**Electronic State Business Daily**			
	§113.201	Authority		§20.201	Authority
	§113.202	Purpose		§20.202	Purpose
	§113.203	Definitions		§20.203	Definitions
	§113.204	Notice and Information Posting Requirements		§20.204	Notice and Information Posting Requirements
	§113.205	Internet Access		§20.205	Internet Access
	§113.206	Fees		§20.206	Fees
	§113.207	Posting Time Requirements		§20.207	Posting Time Requirements
	§113.208	Emergency Procurements		§20.208	Emergency Procurements
	§113.209	Internal Repair Procurements		§20.209	Internal Repair Procurements
	§113.210	Multiple Award Schedule Contract Purchases Exceeding $25,000		§20.210	Multiple Award Schedule Contract Purchases Exceeding $25,000
	§113.211	Registered Agent Requirements		§20.211	Registered Agent Requirements
	§113.212	Procurement Opportunity Posting Procedures		§20.212	Procurement Opportunity Posting Procedures
	§113.213	Posting Follow-up and Record Keeping		§20.213	Posting Follow-up and Record Keeping
	§113.214	Contract Award		§20.214	Contract Award
	§113.215	Award Notification		§20.215	Award Notification
	§113.216	Verification of Compliance		§20.216	Verification of Compliance
	§113.217	Exceptions and Exclusions		§20.217	Exceptions and Exclusions

Figure: 1 TAC Chapter 114

Current Rules from Title 1, Part 5 Texas Building and Procurement Commission Chapter 114. Payment for Goods and Services			**Transferred to Title 34, Part 1 Comptroller of Public Accounts Chapter 20. State Procurement and Program Support Services Office**		
Subchapter	**Section**	**Heading**	**Subchapter**	**Section**	**Heading**
			D		**Payments**
	§114.1	Definitions		§20.221	Definitions
	§114.3	Exceptions to Prompt Pay Process		§20.223	Exceptions to Prompt Pay Process
	§114.5	Invoicing Standards		§20.225	Invoicing Standards
	§114.7	Payments		§20.227	Payments
	§114.9	Disputed Payments		§20.229	Disputed Payments
	§114.10	Collection of Debts		§20.230	Collection of Debts

Figure: 1 TAC Chapter 117

Current Rules from Title 1, Part 5 Texas Building and Procurement Commission Chapter 117. Support Services Division			**Transferred to Title 34, Part 1 Comptroller of Public Accounts Chapter 20. State Procurement and Program Support Services Office**		
Subchapter	**Section**	**Heading**	**Subchapter**	**Section**	**Heading**
A		**Mail and Messenger Services**	**E**		**State Support Services--Mail and Printing**
	§117.31	Mail and Messenger Services		§20.231	Mail and Messenger Services
D		**Printing**			
	§117.61	Printing		§20.261	Printing

Figure: 1 TAC Chapter 125

Current Rules from Title 1, Part 5 Texas Building and Procurement Commission Chapter 125. Support Services Division--Travel and Vehicle			**Transferred to Title 34, Part 1 Comptroller of Public Accounts Chapter 20. State Procurement and Program Support Services Office**		
Subchapter	**Section**	**Heading**	**Subchapter**	**Section**	**Heading**
A		**Travel Management Services**	**F**		**State Support Services--Travel and Vehicles**
	§125.1	Purpose and Applicability		§20.301	Purpose and Applicability
	§125.2	Definitions		§20.302	Definitions
	§125.3	Exceptions to the Use of Contract Travel Services		§20.303	Exceptions to the Use of Contract Travel Services
	§125.4	State Agency Contracts and Requests for Exceptions		§20.304	State Agency Contracts and Requests for Exceptions
	§125.5	State Agency Travel Coordinators		§20.305	State Agency Travel Coordinators
	§125.6	State Agency Reimbursement and Reporting		§20.306	State Agency Reimbursement and Reporting
	§125.7	Procuring Travel Agency and Other Travel Related Services		§20.307	Procuring Travel Agency and Other Travel Related Services
	§125.8	State Travel Credit Cards		§20.308	State Travel Credit Cards
B		**State Vehicle Fleet Management**			
	§125.40	Definitions		§20.340	Definitions
	§125.41	Office of Vehicle Fleet Management		§20.341	Office of Vehicle Fleet Management
	§125.42	State Vehicle Fleet Management Plan		§20.342	State Vehicle Fleet Management Plan
	§125.43	Assignment and Use of Pooled Vehicles		§20.343	Assignment and Use of Pooled Vehicles
	§125.45	Vehicle Fleet Management System		§20.345	Vehicle Fleet Management System
	§125.49	Vehicle Use Report		§20.349	Vehicle Use Report
C		**Texas Alternative Fuels Program**			
	§125.63	Assistance to State Agencies and School Districts		§20.363	Assistance to State Agencies and School Districts
	§125.65	Waiver of Vehicles to Meet Required Fleet Percentages		§20.365	Waiver of Vehicles to Meet Required Fleet Percentages
	§125.67	Effect of Waiver		§20.367	Effect of Waiver
	§125.69	Alternative Fuel Usage		§20.369	Alternative Fuel Usage

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission (Commission) will review and consider for re-adoption, revision, or repeal of Chapter 91, §§91.6001 (Fiduciary Duties); 91.6002 (Fiduciary Capacities); 91.6003 (Notice Requirements); 91.6004 (Exercise of Fiduciary Powers); 91.6005 (Exemption from Notice); 91.6006 (Policies and Procedures); 91.6007 (Review of Fiduciary Accounts); 91.6008 (Recordkeeping); 91.6009 (Audit); 91.6010 (Custody of Fiduciary Assets); 91.6011 (Trust Funds); 91.6012 (Compensation, Gifts, and Bequests); 91.6013 (Bond Coverage); 91.6014 (Errors and Omissions Insurance); and 91.6015 (Litigation File) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is August 31, 2007.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200702578
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 21, 2007

♦ ♦ ♦

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 130 concerning Impairment and Supplement Income Benefits. This proposed review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature; the General Appropriations Act, Sections 9 - 10, 76th Legislature; and Texas Government Code, §2001.039, as added by S.B. 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist, and it proposes to readopt these rules:

SUBCHAPTER A - Impairment Income Benefits

§130.1 Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment

§130.2 Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by the Treating Doctor

§130.3 Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by a Doctor other than the Treating Doctor

§130.4 Presumption that Maximum Medical Improvement (MMI) has been Reached and Resolution when MMI has not been Certified

§130.6 Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings

§130.7 Acceleration of Impairment Income Benefits

§130.8 Initiating Payment of Impairment Income Benefits

§130.10 Commission Review of Employment Status during the Impairment Income Benefits Period

§130.11 Agreement for Monthly Payment of Impairment Income Benefits

§130.12 Finality of the First Certification of Maximum Medical Improvement and/or First Assignment of Impairment Rating

SUBCHAPTER B - Supplemental Income Benefits

§130.100 Applicability

§130.101 Definitions

§130.102 Eligibility for Supplemental Income Benefits; Amount

§130.103 Determination of Entitlement or Non-entitlement for the First Quarter

§130.104 Determination of Entitlement or Non-entitlement for Subsequent Quarters

§130.105 Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters

§130.106 Permanent Loss of Entitlement to Supplemental Income Benefits

§130.107 Payment of Supplemental Income Benefits

§130.108 Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees

§130.109 Reinstatement of Entitlement If Discharged with Intent To Deprive of Supplemental Income Benefits

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 6, 2007 and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200702666
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 26, 2007

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 131 concerning Benefits--Lifetime Income Benefits. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§131.1 Initiation of Lifetime Income Benefits

§131.2 Calculation of Lifetime Income Benefits

§131.3 Carrier's Petition for Payment of Benefits by the Subsequent Injury Fund

§131.4 Change in Payment Period; Purchase of Annuity for Lifetime Income Benefits

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 6, 2007, and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200702667
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 26, 2007

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 132 concerning Death Benefits--Death and Burial Benefits. This proposed review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature; the General Appropriations Act, Sections 9 - 10, 76th Legislature; and Texas Government Code, §2001.039, as added by S.B. 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist, and it proposes to readopt these rules.

§132.1 Calculation of Death Benefits

§132.2 Determination of Facts of Dependent Status

§132.3 Eligibility of Spouse To Receive Death Benefits

§132.4 Eligibility of a Child To Receive Death Benefits

§132.5 Eligibility of a Grandchild To Receive Death Benefits

§132.6 Eligibility of Other Surviving Dependents To Receive Death Benefits

§132.7 Duration of Death Benefits for Eligible Spouse

§132.8 Duration of Death Benefits for an Eligible Child

§132.9 Duration of Death Benefits for an Eligible Grandchild and any Other Eligible Dependents

§132.10 Payment of Death Benefits to the Subsequent Injury Fund

§132.11 Distribution of Death Benefits

§132.12 Redistribution of Death Benefits

§132.13 Burial Benefits

§132.14 Autopsy

§132.15 Definitions

§132.16 Change in Payment Periods; Purchase of Annuity for Death Benefits

§132.17 Denial, Dispute, and Payment of Death Benefits

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 6, 2007, and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200702668
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 26, 2007

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Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) proposes to review 16 TAC Chapter 403, General Administration, in accordance with the requirements of Government Code, §2001.039, which directs each state agency to review and consider for readoption each of its rules every four years. During this review the Commission will assess, at a minimum, whether the reasons for adopting each of the rules in Chapter 403 continue to exist.

The Commission will accept comments in regard to whether the reasons for adopting each of the rules in Chapter 403 continue to exist. The

comment period begins on Friday, July 13, 2007, and ends on Monday, August 13, 2007. Comments should be submitted to Sarah Woelk by mail at P.O. Box 16630, Austin, Texas 78711; by facsimile at (512) 344-5189; or by email at www.txlottery.org.

At the conclusion of the review of Chapter 403, the Commission will take one of the following actions in regard to each rule in Chapter 403: The Commission will readopt the rule, the Commission will propose the repeal of the rule, or the Commission will propose readopting the rule with revisions. If the Commission readopts a rule, notice of the readoption will appear in the *Texas Register* Rule Review section, but the text of the readopted rule will not be published. Any proposed repeal of a rule or any proposed amendment to a rule will be published in the Proposed Rules section of the *Texas Register* in accordance with procedures set out in Government Code, Chapter 2001, subchapter B, and will be the subject of an additional comment period before final repeal or final adoption.

TRD-200702681
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 27, 2007

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Texas Department of Public Safety

Title 37, Part 1

Pursuant to Government Code, §2001.039, the Texas Department of Public Safety (department) files this notice of intent to review and consider for readoption, amendment, or repeal 37 TAC Chapter 3 (Texas Highway Patrol), Chapter 4 (Commercial Vehicle Regulations), Chapter 5 (Criminal Law Enforcement), and Chapter 25 (Safety Responsibility Regulations).

The department will determine whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. Any changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*.

Written comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to Pat Holmes, Inspector, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140.

TRD-200702698
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: June 27, 2007

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Adopted Rule Review

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Pursuant to the notice of proposed rule review published in the January 19, 2007, issue of the *Texas Register* (32 TexReg 247), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on January 19, 2007, of the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 156, Representation of Parties Before the Agency--Carrier's Austin Representative and Chapter 160, Workers' Health and Safety--General Provisions.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapters 156, and 160. The completion of the review of these chapters concludes the rule review process.

TRD-200702653
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 25, 2007

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §229.471(11)(D)(i)

Table A. Control of spores: Product heat-treated to control vegetative cells and subsequently packaged.

Critical a_w values	Critical pH values		
	4.6 or less	>4.6 - 5.6	>5.6
0.92 or less	non-PHF/non-TCS	non-PHF/non-TCS	non-PHF/non-TCS
>0.92 - 0.95	non-PHF/non-TCS	non-PHF/non-TCS	PHF/TCS
>0.95	non-PHF/non-TCS	PHF/TCS	PHF/TCS

Figure: 25 TAC §229.471(11)(D)(ii)

Table B. Control of vegetative cells and spores: Product not heat-treated or heat-treated but not packaged.

Critical a_w Values	Critical pH values			
	<4.2	4.2 - 4.6	4.6 - 5.0	>5.0
<0.88	non-PHF/non-TCS	non-PHF/non-TCS	non-PHF/non-TCS	non-PHF/non-TCS
0.88 - 0.90	non-PHF/non-TCS	non-PHF/non-TCS	non-PHF/non-TCS	PHF/TCS
>0.90 - 0.92	non-PHF/non-TCS	non-PHF/non-TCS	PHF/TCS	PHF/TCS
>0.92	non-PHF/non-TCS	PHF/TCS	PHF/TCS	PHF/TCS

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Successful Completion of Mexican Fruit Fly Eradication

On March 6, 2007, a mated female Mexican fruit fly was detected in a McPhail trap located on a sour orange tree at the Laredo Community College campus, Webb County, Texas. Consequently, the Texas Department of Agriculture (the department) adopted on an emergency basis a Mexican fruit fly quarantine to prevent spread of this pest into other areas of Texas and to facilitate eradication. That quarantine was published as Title 4, Texas Administrative Code, §§19.190 - 19.198, in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1817). As of June 16, 2007, no additional Mexican fruit flies were detected for a time period equal to three consecutive generations of this pest after the initial detection on March 6, 2007. Consequently, the Mexican fruit fly eradication criterion established in §19.191 of the Mexican fruit fly quarantine has been met and the department has lifted the quarantine from that part of Webb County described in §19.192(a)(2) of the quarantine as a quarantined infested area. Furthermore, the department does not intend to adopt this quarantine on a permanent basis. For more information, please call Dr. Shashank Nilakhe, State Entomologist, at (512) 463-1145.

TRD-200702576
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: June 21, 2007

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Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in Harris County, Texas and State of Texas v. Henry T.T. Lucky, Inc., Choon Hae Kim dba Bell Dry Cleaners, the Estate of Dae Kim, and Jimmy Kim, Cause No. 2003-03457, 152nd Judicial District of Harris County, Texas.

Background: This suit alleges violations of the Texas Solid Waste Disposal Act at a dry cleaners in Harris County, Texas. The defendant is Jimmy Kim. The suit seeks civil penalties, attorney's fees, and court costs for failing to keep records of dry cleaning waste disposal and failing to properly label and store dry cleaning waste.

Nature of Settlement: The settlement awards the State and Harris County a $98,750 civil penalty, $78,750 of which may be forgiven upon timely payment of $20,000 of the civil penalty and attorney's fees. The settlement also awards the State and Harris County a total of $5,500 in attorney's fees.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200702651
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 25, 2007

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 15, 2007, through June 21, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 27, 2007. The public comment period for this project will close at 5:00 p.m. on July 27, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Hall-Houston Exploration II, LP; Location: The project is located in Galveston Area Block 151 of the Galveston Anchorage Area, in federal waters of the Gulf of Mexico, Offshore Texas. The State Plane, Texas South Central Coordinates in NAD 27 (feet) are X=3397645.81; Y=532470.00. Project Description: The applicant proposes to install, operate, and maintain a jack-up drilling rig and/or caisson well protector, production platform, and appurtenant structures and equipment necessary to conduct drilling and production operations for one well in Galveston Block 151 (Lease OCS-G 15740) within the Galveston Anchorage Area. The applicant proposes to install

a 6-inch gas/condensate pipeline from the proposed Galveston 151, Well No. 6 Platform B to an existing Platform A (owned by Apache Corporation) located in High Island Block 179 (OCS-G 03236). The total length of the pipeline would be approximately 44,163-feet with approximately 10,975-feet buried to a minimum depth of 16.5-feet in the Anchorage Area, prior to paralleling the Galveston Entrance Fairway 32,631-feet (at which time burial would meet the 10-foot requirement. Approximately 94,063 cubic yards of soft silty clay would be discharged by jetting the pipeline. CCC Project No.: 07-0223-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-927 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Listowski-Hatmaker, LP; Location: The project is located along Galveston West Bay at the Ponticello Subdivision, Teichman Road at 93rd Street in Galveston County, Galveston Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 317795; Northing: 3240786. Project Description: The applicant proposes to construct 6 private common piers with 12 attached boathouses, one community walkover, bridge and pier. The applicant proposes to construct a navigational channel and place approximately 2,618 cubic yards of sand fill into a 0.39-acre of fill into wetlands. The applicant proposes to discharge approximately 5,714 cubic yards of hydraulically dredged material (sand) into 1.25-acres of shallow unvegetated waters of the U.S. for beneficial use of dredged material to create a shoreline preservation barrier island for shoreline stabilization. CCC Project No.: 07-0224-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-555 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at 512/475-0680.

TRD-200702656
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 26, 2007

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72-75, Property Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP #179b) from qualified, independent firms to provide professional unclaimed property auditing services to Comptroller. One or more successful respondents will assist Comptroller in conducting audits of unclaimed property holders and providing other related services, as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s) will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about September 1, 2007.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, July 6, 2007, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically after 10:00 a.m. (CZT), Friday, July 6, 2007.

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Friday, July 20, 2007. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on Friday, July 27, 2007, or as soon thereafter as practical, on the Electronic State Business Daily at: http://esbd.tbpc.state.tx.us. Letters of Intent and Questions received after the foregoing deadline will not be considered. Respondents are solely responsible for verifying timely receipt in the Issuing Office of Non-Mandatory Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Friday, August 3, 2007. Proposals received in the Issuing Office after this time and date will not be considered. Respondents are solely responsible for verifying the timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 6, 2007, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - July 20, 2007, 2 p.m. CZT; Official Questions and Responses posted - July 27, 2007 (or as soon thereafter as practical); Proposals Due - August 3, 2007, 2 p.m. CZT; Contract Execution - September 1, 2007, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2007, or as soon thereafter as practical.

TRD-200702671
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 27, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission

may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 6, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 6, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Ballater, Ltd.; DOCKET NUMBER: 2007-0451-WQ-E; IDENTIFIER: RN105153266; LOCATION: Magnolia, Montgomery County, Texas; TYPE OF FACILITY: single-family home construction site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $2,700; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: BFI Waste Services of Texas, LP dba Allied Waste Services of Houston; DOCKET NUMBER: 2007-0231-IHW-E; IDENTIFIER: RN103765053; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: commercial waste hauling company; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the transportation of nonhazardous Class I industrial waste; 30 TAC §335.6(c), by failing to update the notice of registration (NOR); and 30 TAC §205.6 and the Code, §5.702, by failing to pay the outstanding general permits storm water fee; PENALTY: $1,100; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Broadmore Custom Homes LP; DOCKET NUMBER: 2007-0158-WQ-E; IDENTIFIER: RN104951322; LOCATION: Aurora, Wise County, Texas; TYPE OF FACILITY: construction site for single family housing development; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activity; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Cleveland; DOCKET NUMBER: 2007-0645-MWD-E; IDENTIFIER: RN102179892; LOCATION: Liberty County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10766001, Effluent Limitations and Monitoring Requirements No. 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(17) and TPDES Permit No. 10766001, Monitoring and Reporting Requirements No. 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $1,287; Supplemental Environmental Project (SEP) offset amount of $1,030 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Davis Petroleum Pipeline LLC; DOCKET NUMBER: 2007-0401-AIR-E; IDENTIFIER: RN100211739; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: oil and gas production plant; RULE VIOLATED: 30 TAC §116.110(a) and §122.130(b)(1) and Texas Health & Safety Code (THSC), §382.085(b), by failing to obtain new source review authorization for air emissions and failed to submit an abbreviated Title V Operating Permit application; THSC, §382.085(a) and (b), by failing to prevent an off-site impact of 140 parts per billion by volume of benzene; and 30 TAC §101.10(a)(1) and THSC, §382.085(b), by failing to submit annual emissions inventories for the years 2003, 2004, and 2005; PENALTY: $30,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Dial Lubricants, Inc.; DOCKET NUMBER: 2007-0340-IHW-E; IDENTIFIER: RN100525286; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: transporter of industrial solid waste; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the transportation of industrial hazardous waste to an unauthorized facility; PENALTY: $900; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Dillard Dry Cleaning & Restoration, Inc. dba Marvel Cleaners; DOCKET NUMBER: 2006-0934-DCL-E; IDENTIFIER: RN104028444; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Diocese of Galveston-Houston; DOCKET NUMBER: 2007-0384-MWD-E; IDENTIFIER: RN101523215; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit No. 14218001, Effluent Limitations and Monitoring Requirements No. 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; PENALTY: $6,080; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2007-0210-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery and lubrication manufacturing plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the commission of a reportable emission event; 30 TAC §101.20(3) and §116.115(c), Permit Numbers 1202, 18277, 19566/PSD-TX-768M1/PSD-TX-932, 49134, and 49151, Special Condition 1, and THSC, §382.085(b), by failing to properly oper-

ate emission control equipment during normal operations; 30 TAC §116.110(a), Standard Exemption 69, and THSC, §382.085(b) and §382.0518(a), by emitting unauthorized emissions of hydrogen sulfide; and 30 TAC §116.110(a), Standard Exemption 69, and THSC, §382.085(b) and §382.0518(a), by emitting unauthorized emissions of volatile organic compounds; PENALTY: $24,139; Supplemental Environmental Project (SEP) offset amount of $9,656 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Forest Water Supply Corporation; DOCKET NUMBER: 2007-0482-PWS-E; IDENTIFIER: RN101183465; LOCATION: Cherokee County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes; 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acids; PENALTY: $1,214; ENFORCEMENT COORDINATOR: Christopher Miller, (512) 239-6580; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: Fossil Rim Wildlife Center, Inc.; DOCKET NUMBER: 2007-0697-PWS-E; IDENTIFIER: RN101190197; LOCATION: Somervell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(d)(2)(B)(ii) and THSC, §341.0315(c), by failing to provide ground storage capacity equal to 50% of the maximum daily demand; PENALTY: $315; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: G & W Water Supply Corporation; DOCKET NUMBER: 2007-0378-PWS-E; IDENTIFIER: RN101266930; LOCATION: Waller, Grimes County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue boil water notice; 30 TAC §290.46(d)(2)(A) and THSC, §341.0315(c), by failing to maintain a free chlorine residual of at least 0.2 milligrams per liter throughout the distribution system; 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power to deliver a rate of 0.35 gallons per minute (gpm) per connection; and 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; PENALTY: $840; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 7510335.

(13) COMPANY: Grant Rd Enterprises, LLC; DOCKET NUMBER: 2007-0894-PST-E; IDENTIFIER: RN102492766; LOCATION: Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Lighthouse Land Ventures, Ltd.; DOCKET NUMBER: 2007-0330-EAQ-E; IDENTIFIER: RN105135354; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: commercial development site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Water Pollution Protection Plan; PENALTY: $58,000; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Los Betos Caliche Pit, L.L.C.; DOCKET NUMBER: 2007-0273-MSW-E; IDENTIFIER: RN105109151; LOCATION: Hidalgo County, Texas; TYPE OF FACILITY: caliche pit; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 4256010.

(16) COMPANY: Mesa Canyon Springs, Ltd.; DOCKET NUMBER: 2007-0483-EAQ-E; IDENTIFIER: RN104162474; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan modification; PENALTY: $750; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 238-5806; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Paul Mullin dba Paul Mullin's Septic Tank Service; DOCKET NUMBER: 2006-0685-SLG-E; IDENTIFIER: RN103150629; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: sludge transportation operation; RULE VIOLATED: 30 TAC §312.143 and the Code, §26.121(a), by failing to deposit wastes at a facility designated by or acceptable to the generator; 30 TAC §312.144(a), by failing to prominently mark the truck used in transportation of wastes with the company name, telephone number, and current authorization stickers; 30 TAC §312.144(d), by failing to have a sight gauge on the transporter truck's tank; and 30 TAC §312.145(a), by failing to maintain a record of each individual collection and deposit of waste transported to the use of five-part trip tickets; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: City of Newcastle; DOCKET NUMBER: 2007-0517-PWS-E; IDENTIFIER: RN102691748; LOCATION: Newcastle, Young County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h), by failing to implement a backflow prevention program; 30 TAC §290.46(f)(3)(E)(iv), by failing to maintain copies of customer service inspection reports; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: $495; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(19) COMPANY: Owens Corning; DOCKET NUMBER: 2007-0537-AIR-E; IDENTIFIER: RN100222140; LOCATION: Amarillo, Randall County, Texas; TYPE OF FACILITY: fiberglass manufacturing plant; RULE VIOLATED: 30 TAC §122.145(2)(A) and (B) and THSC, §382.085(b), by failing to submit a timely deviation report and failed to include all instances of deviations in the associated deviation report; PENALTY: $2,925; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(20) COMPANY: James E. Post; DOCKET NUMBER: 2007-0611-LII-E; IDENTIFIER: RN105194591; LOCATION: Rockport, Aransas County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold a valid irrigator license; PENALTY: $250; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL

OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 8253100.

(21) COMPANY: Reagent Chemical & Research, Inc.; DOCKET NUMBER: 2007-0705-IWD-E; IDENTIFIER: RN102409570; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04552, Effluent Limitations and Monitoring Requirements Nos. 1 and 2 at Outfall Number 003, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: $2,940; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Rio Brazos Water Supply Corporation; DOCKET NUMBER: 2007-0663-PWS-E; IDENTIFIER: RN101457604; LOCATION: Parker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain the storage and pressure maintenance facilities and related appurtenances in a watertight condition; and 30 TAC §290.46(t), by failing to post a legible sign at each of the system's production, treatment, and storage facilities; PENALTY: $154; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Shaded Lane Water Company, Inc.; DOCKET NUMBER: 2007-0351-PWS-E; IDENTIFIER: RN101260420; LOCATION: Johnson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gpm per connection; 30 TAC §290.43(c)(5), by failing to locate inlet connections on the ground storage tank so as to prevent short-circuiting or stagnation of water; and 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of two gpm per connection at each pump station or pressure plane; PENALTY: $472; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Shell Pipeline Company, LP; DOCKET NUMBER: 2007-0369-AIR-E; IDENTIFIER: RN102027174; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: pipeline station; RULE VIOLATED: 30 TAC §122.143(4), Operating Permit O-02733, Special Condition 3(A)(iv)(1), and THSC, §382.085(b), by failing to perform quarterly opacity observations of the stationary vents; 30 TAC §122.143(4) and §122.145(2)(A) and (B), Operating Permit O-02733, General Conditions, and THSC, §382.085(b), by failing to submit a semi-annual deviation report; and 30 TAC §122.146(1) and §122.146(5)(C)(v) and (D) and THSC, §382.085(b), by failing to accurately report all deviations; PENALTY: $6,534; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: Joe Sotelo; DOCKET NUMBER: 2007-0593-LII-E; IDENTIFIER: RN103367991; LOCATION: McAllen, Hidalgo County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §344.70 and Texas Occupations Code, §1903.251, by failing to comply with local requirements, ordinances, and regulations; PENALTY: $475; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5427, (956) 425-6010.

(26) COMPANY: South-Tex Concrete, Inc. dba South Tex Concrete Company; DOCKET NUMBER: 2007-0895-WQ-E; IDENTIFIER: RN102764867; LOCATION: Cameron County, Texas; TYPE OF FACILITY: concrete company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5427, (956) 425-6010.

(27) COMPANY: Southwestern Public Service Company; DOCKET NUMBER: 2007-0521-AIR-E; IDENTIFIER: RN100224849; LOCATION: Amarillo, Potter County, Texas; TYPE OF FACILITY: electric power generation plant; RULE VIOLATED: 30 TAC §122.146(1) and THSC, §382.085(b), by failing to submit their compliance certification; PENALTY: $750; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(28) COMPANY: Texas Children's Hospital; DOCKET NUMBER: 2007-0189-MLM-E; IDENTIFIER: RN100583483; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: full-care pediatric hospital; RULE VIOLATED: 30 TAC §335.6(c), by failing to update the NOR; 30 TAC §335.6(h), by failing to notify the TCEQ of recycling activity; and 30 TAC §330.171(c)(6) and §335.2(b), by failing to prevent the unauthorized disposal of hazardous waste; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: University of Texas Medical Branch at Galveston; DOCKET NUMBER: 2005-1973-AIR-E; IDENTIFIER: RN101921138; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: hospital facility with incinerator and crematory stacks; RULE VIOLATED: 30 TAC §113.2072(a) and (b)(2) and §116.115(c), Permit Number 18655, Special Condition 4, and THSC, §382.085(b), by failing to operate within the permitted limits for opacity and emission limits for particulate matter; and 30 TAC §113.2075(a)(2)(B) and §116.115(c), Permit Number 18655, Special Condition 11C, and THSC, §382.085(b), by failing to perform annual performance stack test; PENALTY: $11,400; Supplemental Environmental Project (SEP) offset amount of $9,120 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Philip Wetzel; DOCKET NUMBER: 2007-0627-LII-E; IDENTIFIER: RN105071922; LOCATION: Rockwall, Rockwall County, Texas; TYPE OF FACILITY: landscape and irrigation installation business; RULE VIOLATED: 30 TAC §30.5(b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold a current irrigator license or employ individuals who hold current irrigator licenses prior to advertising irrigation installation services; PENALTY: $237; ENFORCEMENT COORDINATOR: Cynthia McKaughan, (512) 239-0735; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200702655
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 26, 2007

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Enforcement Orders

An agreed order was entered regarding Duininck Brothers, Inc. dba Duininck Brothers Construction Company, Docket No. 2004-1091-PST-E on June 19, 2007 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Arshad dba The Eagle Stop, Docket No. 2004-1424-PST-E on June 19, 2007 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Goree, Docket No. 2005-0441-MWD-E on June 19, 2007 assessing $2,320 in administrative penalties with $464 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wallach Concrete, Inc., Docket No. 2005-0586-AIR-E on June 19, 2007 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Transit Mix Concrete & Materials Company, Docket No. 2005-0609-MLM-E on June 19, 2007 assessing $27,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Erik Howard dba Howard Ranch Subdivision, Docket No. 2005-1244-EAQ-E on June 19, 2007 assessing $36,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wood Processing Services, Inc., Docket No. 2005-1314-MSW-E on June 19, 2007 assessing $3,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Curnutt, Staff Attorney at (512) 239-0624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alishan, Inc. dba Super Stop 16, Docket No. 2005-1477-PST-E on June 19, 2007 assessing $17,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Winters, Docket No. 2005-1506-PWS-E on June 19, 2007 assessing $9,016 in administrative penalties with $1,803 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Naide Enterprises, Inc. dba Big Star Mart, Docket No. 2005-1562-PST-E on June 19, 2007 assessing $6,825 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2005-1671-AIR-E on June 19, 2007 assessing $283,654 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AGA Enterprises, Inc. dba Chevron Food Mart 2, Docket No. 2006-0299-PST-E on June 19, 2007 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Demecio Chavez, Docket No. 2006-0311-LII-E on June 19, 2007 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMK Enterprises, LLC dba The Olde Tymer, Docket No. 2006-0381-PWS-E on June 19, 2007 assessing $2,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Paul Smith and Stacy Wershing dba R&J Recycling Center and Construction Services, LLC, Docket No. 2006-0435-MSW-E on June 19, 2007 assessing $3,050 in administrative penalties with $610 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B-F Utilities, Inc., Docket No. 2006-0445-PWS-E on June 19, 2007 assessing $158 in administrative penalties with $32 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Miller, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bertha Vonderau dba Wharton Steam Laundry DS, Docket No. 2006-0654-DCL-E on June 19, 2007 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RM Walsdorf, Inc., Docket No. 2006-0756-MLM-E on June 19, 2007 assessing $15,625 in administrative penalties with $3,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Five Star Legacy, Inc. dba Bell Cleaners, Docket No. 2006-0995-DCL-E on June 19, 2007 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cowtown Petroleum Limited dba Cowtown Plaza, Docket No. 2006-1089-PST-E on June 19, 2007 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Asmaou B. Malone dba AM Cleaners, Docket No. 2006-1152-DCL-E on June 19, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ha Yen dba 1.25 Super Cleaners, Docket No. 2006-1169-DCL-E on June 19, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2006-1196-AIR-E on June 19, 2007 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aly Mohammad, Inc. dba Dapper Dan Cleaners, Docket No. 2006-1200-DCL-E on June 19, 2007 assessing $3,319 in administrative penalties with $663 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BK Services Inc. dba US 59 Fuel Mart, Docket No. 2006-1367-PST-E on June 15, 2007 assessing $7,315 in administrative penalties with $1,463 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of West, Docket No. 2006-1436-MWD-E on June 19, 2007 assessing $11,825 in administrative penalties with $2,365 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Littlerado, Inc. dba One Hour Pronto Cleaners, Docket No. 2006-1454-DCL-E on June 19, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yong Baek O. dba 2 EZ Cleaners, Docket No. 2006-1463-DCL-E on June 19, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hoon Chin dba Welcome Cleaners, Docket No. 2006-1466-DCL-E on June 19, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eddie & Manal, LLC dba Café Natalie, Docket No. 2006-1509-PWS-E on June 19, 2007 assessing $1,487 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A. Schulman, Inc., Docket No. 2006-1524-IWD-E on June 19, 2007 assessing $14,560 in administrative penalties with $2,912 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastman Chemical Company, Docket No. 2006-1532-AIR-E on June 19, 2007 assessing $32,035 in administrative penalties with $6,407 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2006-1550-AIR-E on June 19, 2007 assessing $46,416 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WFC Company Inc. dba Warminster Fiberglass, Docket No. 2006-1552-AIR-E on June 19, 2007 assessing $14,400 in administrative penalties with $2,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Premier Cleaners Group, LP dba Premier Cleaners dba Perry's Cleaners dba Parkwood Cleaners dba Lakeside Cleaners, Docket No. 2006-1556-DCL-E on June 19, 2007 assessing $4,740 in administrative penalties with $948 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Henry Handy dba Handy's Majestic Cleaners, Docket No. 2006-1581-DCL-E on June 19, 2007 assessing $3,555 in administrative penalties with $711 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lonzo Gale dba Lass Utility Service Company, Docket No. 2006-1595-MLM-E on June 14, 2007 assessing $1,446 in administrative penalties with $289 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Martin, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kim Oanh T. Nguyen dba US DC Alterations and Shoe Repair, Docket No. 2006-1618-DCL-E on June 19, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Benedum Gas Partners, LP and Upton Gas GP, Inc. dba Wilshire Treating Facility, Docket No. 2006-1632-AIR-E on June 19, 2007 assessing $41,726 in administrative penalties with $8,345 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Champion Pet Foods, Inc., Docket No. 2006-1635-AIR-E on June 19, 2007 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2006-1703-AIR-E on June 19, 2007 assessing $5,975 in administrative penalties with $1,195 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2006-1713-AIR-E on June 19, 2007 assessing $14,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jason Kemp, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jatra International, Inc., Docket No. 2006-1720-MWD-E on June 19, 2007 assessing $5,280 in administrative penalties with $1,056 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Airline Conoco, Inc., Docket No. 2006-1768-PST-E on June 19, 2007 assessing $3,900 in administrative penalties with $780 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Linh Nguyen dba P&H Food 2, Docket No. 2006-1803-PST-E on June 19, 2007 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Range Pipeline Systems, L.P., Docket No. 2006-1805-AIR-E on June 14, 2007 assessing $850 in administrative penalties with $170 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maverick County, Docket No. 2006-1812-MSW-E on June 19, 2007 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Oglesby, Docket No. 2006-1836-MWD-E on June 19, 2007 assessing $13,350 in administrative penalties with $2,670 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mercer Construction Company, Docket No. 2006-1848-WQ-E on June 19, 2007 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Coolidge, Docket No. 2006-1878-MWD-E on June 19, 2007 assessing $9,680 in administrative penalties with $1,936 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fas Mart Inc., Docket No. 2006-1909-PST-E on June 19, 2007 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2006-1935-MWD-E on June 19, 2007 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Santos Construction, Inc., Docket No. 2006-1944-WQ-E on June 19, 2007 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry E. Hutton, Docket No. 2006-1955-LII-E on June 19, 2007 assessing $625 in administrative penalties with $125 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chapel Hill Independent School District, Docket No. 2006-1956-MWD-E on June 19, 2007 assessing $9,240 in administrative penalties with $1,848 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rental Service Corporation, Docket No. 2006-1969-AIR-E on June 19, 2007 assessing $1,200 in administrative penalties with $240 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bobby Sonny Johnson dba Blastmasters, Docket No. 2006-1971-AIR-E on June 19, 2007 assessing $4,200 in administrative penalties with $840 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Econo Lube N' Tune, Inc., Docket No. 2006-1976-PST-E on June 19, 2007 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5800, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IBM, Inc. dba Stop & Save, Docket No. 2006-1977-PST-E on June 19, 2007 assessing $3,325 in administrative penalties with $665 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5833, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pflugerville, Docket No. 2006-2000-MWD-E on June 19, 2007 assessing $10,350 in administrative penalties with $2,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James L. Emmot, Docket No. 2006-2019-LII-E on June 19, 2007 assessing $625 in administrative penalties with $125 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASA Management, Inc. dba ASA Brownsville, Docket No. 2006-2034-PST-E on June 19, 2007 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PD Glycol LP, Docket No. 2006-2102-AIR-E on June 19, 2007 assessing $2,875 in administrative penalties with $575 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucite International, Inc., Docket No. 2006-2104-AIR-E on June 19, 2007 assessing $2,600 in administrative penalties with $520 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dechard A. Hulcy, Docket No. 2006-2106-LII-E on June 19, 2007 assessing $200 in administrative penalties with $40 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Energy Transfer Fuel, LP, Docket No. 2006-2255-AIR-E on June 19, 2007 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Kent Distributors, Incorporated dba Kent Kwik 431, Docket No. 2007-0294-PST-E on June 19, 2007 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jefferson County Correctional Facility, Docket No. 2007-0295-PST-E on June 19, 2007 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Lube Center Management, LTD. dba Jiffy Lube 823, Docket No. 2007-0357-PST-E on June 19, 2007 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200702691

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 27, 2007

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Notice of Water Quality Applications

The following notices were issued on June 21, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to TCEQ, Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

PERMIT NO. WQ0001923000; City of Garland, which operates the Ray Olinger Steam Electric Station, a power plant, has applied for a renewal of TPDES Permit No. WQ0001923000, which authorizes the discharge of once through cooling water commingled with steam condensate and storm water at a daily average flow not to exceed 404,000,000 gallons per day via Outfall 001; and low volume wastes and metal cleaning wastes on an intermittent and flow variable basis via evaporation. The draft permit authorizes the discharge of once through cooling water from Units 1, 2, and 3 commingled with steam condensate and storm water at a daily average flow not to exceed 404,000,000 gallons per day via Outfall 001; and low volume wastes and metal cleaning wastes on an intermittent and flow variable basis via evaporation. The facility is located four miles west of State Highway 78 at 13835 County Road 489 on the east shore of Lavon Lake, at Little Ridge Park, two and three eighths miles southwest of the City of Copeville, Collin County, Texas.

PERMIT NO. WQ0002449000; CHEMCENTRAL Southwest, L.P., which operates the CHEMCENTRAL Houston FM 529 facility, a bulk storage terminal for chemicals and allied products, has applied for a major amendment to TPDES Permit No. WQ0002449000 to authorize the addition of Outfall 003 which will discharge storm water on an intermittent restricted flow basis. The current permit authorizes of storm water on an intermittent and flow variable basis via Outfall 001 and wash water and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located 11235 Farm-to-Market Road 529, approximately 0.5 mile southwest of the intersection of U.S. Highway 290 and Farm-to-Market Road 529, near the City of Jersey Village, Harris County.

PERMIT NO. WQ0003099000; The Whitmore Manufacturing Company, which operates a facility that produces specialty lubricating oils greases and coatings has applied for a renewal of TPDES Permit No. WQ0003099000, which authorizes the discharge of storm water, once through noncontact cooling water, and boiler blowdown water on an intermittent and flow variable basis via Outfall 001. The authorization to discharge boiler blowdown has been removed from the draft permit at the request of the permittee.

PERMIT NO. WQ0003150000; South Coast Terminals, LP., which operates Wallisville Road WWTP a bulk storage and blending/packaging facility, has applied for a renewal of TPDES Permit No. WQ0003150000, which authorizes the discharge of hydrostatic test water, clean water rinsate and treated storm water on an intermittent and flow variable basis via Outfall 001, and clean water rinsate and storm water on an intermittent and flow variable basis via Outfall 002.

PERMIT NO. WQ0003749000; Hillman Shrimp and Oyster Company, which operates a fresh and frozen seafood processing and wholesale facility, has applied for a renewal of TPDES Permit No.WQ0003749000, which authorizes the discharge of seafood washwater, domestic wastewater, and effluent from Hillman's Seafood and Café, Inc. at a daily average flow not to exceed 70,000 gallons per day via Outfall 001. The facility is located at 10700 Hillman Drive, approximately 0.7 miles south-southeast of the intersection of State Highway 146 and Farm-to-Market Road 517, in the City of Texas City, Galveston County, Texas.

PERMIT NO. WQ0003987000; Jerry Lynn Cooper, 13510 Aldine Westfield Road, Houston, Texas 77039, which operates the Texas Remediation Service Wastewater Treatment Plant, a facility collecting and processing wastes from trucks handling septic and holding tank wastes, grease and grit trap wastes, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0003987000, which authorizes the discharge of treated wastewaters from trucks handling septic and holding tank wastes, grease and grit trap wastes at a daily average flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located approximately 600 feet east-northeast of the intersection of Wallisville Road and Loop 610 East, in the City of Houston, Harris County, Texas.

PERMIT NO. WQ0010404004; City of Dilley has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010404004, to authorize the discharge of filter backwash wa-

ter from a water treatment plant at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 200 feet east of U.S. Highway 81, approximately one mile south of the intersection of Miller Street (U.S. Highway 85) and Main Street (U.S. Highway 81) in Frio County, Texas.

PERMIT NO. WQ0010706001; City of Katy has applied for a major amendment to TPDES Permit No. 10706-001 to authorize a decrease in the discharge of treated domestic wastewater from an annual average flow not to exceed 3,450,000 gallons per day to an annual average flow not to exceed 3,075,000 gallons per day and to remove effluent limitations, and monitoring and reporting requirements for zinc. The facility is located at 25839 Interstate Highway 10 on the east bank of Cane Island Branch of Buffalo Bayou, approximately 1,000 feet south of Interstate Highway 10 in the City of Katy in Fort Bend County, Texas.

PERMIT NO. WQ0011180002; Texas Department of Criminal Justice has applied for a renewal of TPDES Permit No. WQ0011180002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located outside the southeast corner of the security compound of the Estelle Unit and approximately one mile east of the intersection of Farm-to-Market Road 3478 and the Estelle Unit entrance road in Walker County, Texas.

PERMIT NO. WQ0011367001; Stanley Lake Municipal Utility District has applied for a renewal of TPDES Permit No. 11367-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 972,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 972,000 gallons per day in the interim and final phases. The draft permit includes effluent limitations for ammonia-nitrogen in the final phase. The facility is located approximately 2,000 feet north of State Highway 105 and adjacent to Lake Conroe, approximately 10 miles west of the City of Conroe in Montgomery County, Texas.

PERMIT NO. WQ0011371001; Montgomery County Municipal Utility District No. 8 has applied for a major amendment to TPDES Permit No. 11371-001 to authorize the discharge of treated wastewater via an additional outfall, Outfall 002. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located on the north side of Old River Road in the eastern section of the Walden Subdivision, approximately 300 feet east of the Lake Conroe shoreline, approximately 6 miles northwest of the City of Conroe in Montgomery County, Texas.

PERMIT NO. WQ0012073001; Fort Bend County Municipal Utility District No. 26 has applied for a renewal of TPDES Permit No. 12073-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 1403 Lazy Springs Drive within the corporate limits of Missouri City approximately 0.4 miles east of the intersection of Farm-to-Market Road 2234 and Court Road in Fort Bend County, Texas.

PERMIT NO. WQ0013457001; Trinity River Authority of Texas has applied for a major amendment to TPDES Permit No. 13457-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 5,000,000 gallons per day to an annual average flow not to exceed 7,000,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards for the dissolved oxygen criterion for the receiving water, Denton Creek and the transition zone area for Grapevine Lake. The variance would authorize a three-year period to allow time for the applicant to perform a dissolved oxygen study to determine if a site specific standard is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located at 1687 U.S. Highway 377 north of Roanoke, approximately 1.5 miles north-northeast of the intersection of State Highway 114 and U.S. Highway 377 in Denton County, Texas.

PERMIT NO. WQ0014109001; Katy-Hockley Corp. has applied for a renewal of TPDES Permit No. 14109-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 300 feet southeast of the intersection of Katy Hockley Cutoff Road and Morton Road in Harris County, Texas.

PERMIT NO. WQ0014323001; Upper Trinity Regional Water District has applied for a renewal of TPDES Permit No. WQ0014323001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day in the final phase. The application also includes a request for a temporary variance to the existing water quality standards for Total Copper. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 4,250 feet northeast of the intersection of Mar-Top Road and Naylor Road (Farm-to-Market Road 424) and approximately 6,300 feet southeast of the intersection of U.S. Highway 380 and Naylor Road (Farm-to-Market Road 424), (a site 500 feet east of Naylor Road) in Denton County, Texas.

PERMIT NO. WQ0014343001; Terrabrook Cinco Ranch Southwest, L.P. has applied for a renewal of TPDES Permit No. WQ0014343001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,250,000 gallons per day. The facility is located approximately 500 feet east and 3,250 feet north of the intersection of Farm-to-Market Road 1093 and Farm-to-Market Road 723 in Fort Bend County, Texas.

PERMIT NO. WQ0014415001; La Joya Water Supply Corporation has applied for a renewal of TPDES Permit No. 14415-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility will be located approximately one mile south of U.S. Expressway 83 on Guadalupe Flores Road and approximately 1,000 feet east of Guadalupe Flores Road in Hidalgo County, Texas.

PERMIT NO. WQ0014751001; The City of Coolidge has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014751001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located 4,500 feet northeast of the intersection of Farm-to-Market Road 73 and Farm-to-Market Road 1951 in Limestone County, Texas.

PERMIT NO. WQ0014781001; The City of La Villa has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014781001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 1300 feet west of the western levee of North Floodway and 2,500 feet north of State Highway 107, east of La Villa in Hildago County, Texas.

PERMIT NO. WQ0014784001Skymark Development Company, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014784001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed exceed 450,000 gallons per day in the final phase. The facility

is located approximately 0.5 miles east of the intersection of John F. Kennedy Boulevard and Greens Bayou in Harris County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200702692
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2007

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

Deadline: Lobby Activities Report due January 10, 2007

E. J. Agbonayinma, P.O. Box 1111, Stafford, TX 7749

Clemon Maddox, 2951 Kinwest Pkwy, Irving, TX 75063-3134

Bee Moorhead, 221 East 9th St., Ste. 403, Austin, TX 78701-2512

Jim C. Terrell, 14543 Robert Walker Blvd., Austin, TX 78728-6708

Deadline: Lobby Activities Report due February 12, 2007

Anthony Haley, 919 Congress Ave., Ste. 1130, Austin, TX 78701-2157

Mark Seale, P.O. Box 301805, Austin, TX 78703-0031

Jim Warren, 710 W. 30th St., Austin, TX 78705-2206

Deadline: Lobby Activities Report due March 12, 2007

Anthony Haley, 919 Congress Ave., Ste. 1130, Austin, TX 78701-2157

John Kroll, 919 Congress Ave., Ste. 1130, Austin, TX 78701-2157

Deadline: Lobby Activities Report due April 10, 2007

Thomas Rene Aguillon, 1900 Blue Crest Lane, San Antonio, TX 78246

Anthony Haley, 919 Congress Ave., Ste. 1130, Austin, TX 78701-2157

Deadline: Personal Financial Statement due April 30, 2007

Elsa Alcala, 1533 W. Alabama St., Ste. 100, Houston, Texas 77006-4105

Christopher Barbic, 930 Cortlandt St., Houston, Texas 77008-7058

James W. Bass Jr., 215 W 2nd St., Tyler, Texas 75701-3038

Nora Castaneda, 2806 Becky Lane, Harlingen, Texas 78550

Robert Earl Childress, 1714 Sabine Lane, Richmond, Texas 77469-7939

Jose E. de Santiago Sr., 15927 Jove St., Houston, Texas 77060-4417

Hector Farias, 705 S. Texas Blvd., Weslaco, Texas 78596-7051

David Gutierrez, 4022 88th St., Lubbock, Texas 79423-2913

Harry E. Johnson Sr., 3606 Crow Valley Dr., Missouri City, Texas 77459-3239

L. Suzan Kedron, 25 Highland Park Village, Ste. 100-102, Dallas, Texas 75205-2789

Shannon K. McClendon, 1302 Overland Stage Rd., Dripping Springs, Texas 78620-2303

Isabel C., Menendez, M.D., P.O. Box 849, Portland, Texas 78374-0849

William C. Morrow, 200 W. Wall St., Ste. 105, Midland, Texas 79701-4541

Cliff Mountain, 2909 Meandering River Court, Austin, Texas 78746-1955

Juan Sanchez Munoz, PhD., 8303 County Road 6915, Lubbock, Texas 79407-5727

Bruce Priddy, 17194 Preston Rd., Ste. 102-347, Dallas, Texas 75248-1227

Cindy Ramos-Davidson, 520 Pinar Del Rio Dr., El Paso, Texas 79932-1912

John W. Riddle, 12615 Brandi Lane, Willis, Texas 77378-2783

Lawrence M. Sampleton, Jr., 2900 Bunny Run, Austin, Texas 78746-1702

Heriberto Silva, 401 N. Britton Ave., Rm. 417, Rio Grande City, Texas 78582-2620

Whitney Thompson Smith, 21006 Highway 7 West, Marquez, Texas 77865-5197

Arthur N. Sosa, 3926 Panama Dr., Apt. 219, Corpus Christi, Texas 78415-3352

Gene Stallings, 6508 County Road 43200, Powderly, Texas 75473-5320

Ronald J. Suchecki, Jr., 1237 Autumn Oaks Cir, China Spring, Texas 76633-3414

Michael D. Thamm, 301 Depot Pl, Cuero, Texas 77954-3007

TRD-200702571
David A. Reisman
Executive Director
Texas Ethics Commission
Filed: June 20, 2007

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Department of State Health Services

Notice of Availability of Texas Community Mental Health Services State Plan (Federal Community Mental Health Block Grant)

The Federal Community Mental Health Block Grant statute (42 USC 300x-51) requires that the Department of State Health Services (DSHS) make the Texas Community Mental Health Services State Plan available for public comment during its development.

DSHS is currently preparing the plan for Fiscal Year (FY) 2008 to describe the intended use of the Federal Community Mental Health Block Grant funds. These funds must be utilized by DSHS to develop new initiatives and/or enhance already existing service delivery systems for

adults with severe mental illness and children with serious emotional disturbance.

When the draft of the FY2008 Texas Community Mental Health Services State Plan is available (on or about July 20, 2007), it may be obtained on the DSHS web site at the following address:www.dshs.state.tx.us/cpi/mhbg; or by contacting Mike Maples at: (512) 206-4747, or by mail at the address listed below.

Comments regarding the FY2008 Texas Community Mental Health Services State Plan should be directed to: MHBG@dshs.state.tx.us; or Mike Maples, Director, Program Services Unit, Community Mental Health and Substance Abuse Section, Department of State Health Services, Mail Code: 2018, 909 West 45th Street, Austin, Texas 78751.

Comments must be received by 5:00 p.m. Central Daylight Saving Time, Friday, August 17, 2007.

TRD-200702573
Linda Wiegman
Deputy General Counsel
Department of State Health Services
Filed: June 20, 2007

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Notice of Opportunity for Public Comment on the Fiscal Year 2008 Statewide Substance Abuse Block Grant (Federal Substance Abuse Prevention and Treatment Block Grant)

Federal statutes (42 USC 300x-21-64) governing the Substance Abuse Prevention and Treatment Block Grant (SAPTBG) include provisions that require the state to provide an annual report of current service activities and make available for public comment a description of the intended use of block grant funds in advance of each federal fiscal year.

The funds made available through the SAPTBG are to be used for maintaining and enhancing a quality statewide substance abuse service system and highlighting priority issues related to federally funded substance abuse prevention and treatment services statewide. The SAPTBG Intended Use Plan may be found at: http://www.dshs.state.tx.us/cpi/saptbg; or by contacting Mike Maples at: (512) 206-4747, or by mail at the address listed below.

Public comments received will be considered in the preparation and development of the FY08 Continuation Application.

Comments regarding the FY2008 Substance Abuse Prevention and Treatment Block Grant should be directed to: SAPTBG@dshs.state.tx.us; or Mike Maples, Director, Program Services Unit, Community Mental Health and Substance Abuse Section, Department of State Health Services, Mail Code: 2018, 909 West 45th Street, Austin, Texas 78751.

Comments must be received by 5:00 p.m. Central Daylight Saving Time, Friday, August 17, 2007.

TRD-200702572
Linda Wiegman
Deputy General Counsel
Department of State Health Services
Filed: June 20, 2007

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on July 25, 2007, at 9:00 a.m. to receive public comment on proposed rate increases for the non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The ICF/MR program is operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase rates for non-state operated ICF/MRs. The proposed payment rates, which will be effective September 1, 2007, are as follows:

Level of Need	8 or Less Beds	9 - 13 Beds	14+ Beds
1 Intermittent	$148.59	$121.53	$98.04
5 Limited	$165.54	$137.99	$107.19
8 Extensive	$188.25	$163.58	$128.09
6 Pervasive	$230.38	$195.68	$173.68
9 Pervasive +	$415.04	$391.89	$389.96

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology codified at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter D, §355.456, Rate Setting Methodology, as proposed to be amended. The proposed

amendment, which will appear in the July 6, 2007, issue of the *Texas Register,* requires that the current modeled rates be updated based on audited cost reports to the extent possible within available appropriations. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). These changes are being made in accordance with the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated $20.2 million general revenue funds for the State Fiscal Year 2008-2009 biennium for Medicaid rate increases for the DADS' ICF/MR program.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 10, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200702697

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 27, 2007

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on July 25, 2007, at 1:30 p.m. to receive public comment on proposed Medicaid rate increases for the Nursing Facility and Hospice-Nursing Facility Programs operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase rates for nursing facility services for all providers under the Nursing Facility and Hospice-Nursing Facility Programs. The proposed rates were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification." The proposed payment rates, which will be effective September 1, 2007, are as follows:

Rates by TILE (Texas Index for Level of Effort) class:

TILE	TILE Base Rate
201	$168.23
202	$150.15
203	$142.11
204	$118.92
205	$110.48
206	$111.71
207	$101.53
208	$98.12
209	$91.57
210	$79.86
211	$76.99
212 (default)	$76.99
Supplemental Payments:	
Ventilator - Continuous	$90.98
Ventilator - Less than Continuous	$36.39
Pediatric Tracheostomy	$54.59

Facilities participating in the Enhanced Direct Care Staff Rate will receive one of the following payment rates per day in addition to the above payment rates based upon their level of enrollment in the Enhanced Direct Care Staff Rate:

Minutes Associated with Proposed Rate	Proposed Rate Per Diem
1 LVN Minute = 2.13 Aide Minutes = 0.69 RN Minutes	$0.34
2 LVN Minutes = 4.25 Aide Minutes = 1.39 RN Minutes	$0.68
3 LVN Minutes = 6.38 Aide Minutes = 2.08 RN Minutes	$1.02
4 LVN Minutes = 8.50 Aide Minutes = 2.78 RN Minutes	$1.36
5 LVN Minutes = 10.63 Aide Minutes = 3.47 RN Minutes	$1.70
6 LVN Minutes = 12.75 Aide Minutes = 4.16 RN Minutes	$2.04
7 LVN Minutes = 14.88 Aide Minutes = 4.86 RN Minutes	$2.38
8 LVN Minutes = 17.00 Aide Minutes = 5.55 RN Minutes	$2.72
9 LVN Minutes = 19.13 Aide Minutes = 6.25 RN Minutes	$3.06
10 LVN Minutes = 21.25 Aide Minutes = 6.94 RN Minutes	$3.40
11 LVN Minutes = 23.38 Aide Minutes = 7.63 RN Minutes	$3.74
12 LVN Minutes = 25.50 Aide Minutes = 8.33 RN Minutes	$4.08
13 LVN Minutes = 27.63 Aide Minutes = 9.02 RN Minutes	$4.42
14 LVN Minutes = 29.75 Aide Minutes = 9.71 RN Minutes	$4.76
15 LVN Minutes = 31.88 Aide Minutes = 10.41 RN Minutes	$5.10
16 LVN Minutes = 34.00 Aide Minutes = 11.10 RN Minutes	$5.44
17 LVN Minutes = 36.13 Aide Minutes = 11.80 RN Minutes	$5.78
18 LVN Minutes = 38.25 Aide Minutes = 12.49 RN Minutes	$6.12
19 LVN Minutes = 40.38 Aide Minutes = 13.18 RN Minutes	$6.46
20 LVN Minutes = 42.50 Aide Minutes = 13.88 RN Minutes	$6.80
21 LVN Minutes = 44.63 Aide Minutes = 14.57 RN Minutes	$7.14
22 LVN Minutes = 46.75 Aide Minutes = 15.27 RN Minutes	$7.48
23 LVN Minutes = 48.88 Aide Minutes = 15.96 RN Minutes	$7.82
24 LVN Minutes = 51.00 Aide Minutes = 16.65 RN Minutes	$8.16
25 LVN Minutes = 53.13 Aide Minutes = 17.35 RN Minutes	$8.50
26 LVN Minutes = 55.25 Aide Minutes = 18.04 RN Minutes	$8.84
27 LVN Minutes = 57.38 Aide Minutes = 18.74 RN Minutes	$9.18

Facilities that verify liability insurance coverage acceptable to HHSC will receive one of the following payment rates per day in addition to the above payment rates based upon the type of liability insurance coverage they maintain:

Type of Liability Insurance	Proposed Rate Per Diem
General and Professional	$1.89
Professional Only	$1.73
General Only	$0.16

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology; §355.308, Direct Care Staff Rate Component; and §355.312, Reimbursement Setting Methodology - Liability Insurance Costs. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). These changes are being made in accordance with the 2008-09 General Appropriations Act (Article IX, Section 19.82, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated $27.0 million in general revenue funds for State Fiscal Year 2008 for provider rate increases for the DADS Nursing Facility Program.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 10, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200702696
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 27, 2007

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces it has submitted to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Women's Health Program (WHP) demonstration waiver, which is a Medicaid family planning waiver under the authority of §1115 of the Social Security Act. HHSC proposes to amend the demonstration program by covering additional benefits and enhancing the reimbursement system for Federally Qualified Health Centers while maintaining budget neutrality. The proposed effective date of this amendment is September 1, 2007.

The Women's Health Program provides a limited, family planning benefit through Medicaid to uninsured Texas women ages 18-44, who meet income requirements and are U.S. citizens or qualified immigrants. The waiver program is authorized under Human Resources Code §32.0248, which lists the general categories of services which may be covered under the program.

The waiver amendment proposes to include the following new benefits under the program at the 90 percent federal financial participation rate: lipid panel; tuberculosis skin test; HIV confirmatory test; syphilis screening; radiological exam of the abdomen related to an intrauterine device; and facility fees for tubal ligation. These specific benefits are allowable under the general categories of services provided under the current waiver and under Human Resources Code §32.0248. These additional benefits will make WHP coverage more similar to the family planning services offered through the Department of State Health Services family planning programs funded through Titles V and XX of the Social Security Act and Title X of the Public Health Service Act. Accompanying the waiver amendment, HHSC has submitted an updated list of allowable procedure codes that reflects the addition of the proposed new benefits.

The waiver amendment also proposes to change the method by which Federally Qualified Health Centers (FQHCs) are reimbursed for providing waiver services. HHSC proposes that FQHCs be reimbursed using the prospective payment system at a per-visit encounter rate not to exceed three encounter rate reimbursements per client per calendar year. Currently, WHP reimburses FQHCs one encounter rate per client per year for all family planning services provided, except for the provision of an intrauterine device (IUD). FQHCs are reimbursed an additional encounter rate for the provision of an IUD. This change in the reimbursement method aligns the Women's Health Program waiver with changes legislatively mandated in the 2008-09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 48, H.B. 1, 80th Legislature, Regular Session, 2007).

This amendment to the demonstration waiver will maintain budget neutrality for each year that the waiver is in effect. The waiver has been approved for a five-year period from 2007 through 2011.

To obtain copies of the waiver amendment, interested parties may contact Carmen Samilpa-Hernandez by mail at Health and Human Services Commission, P.O. Box 85200, H-620, Austin, Texas 78708-5200; by telephone at (512) 491-1128; by facsimile at (512) 491-1953; or by e-mail at carmen.samilpa-hernandez@hhsc.state.tx.us. Comments on the proposed waiver amendment may be submitted by mail to Ms. Samilpa-Hernandez at the above address.

TRD-200702694
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 27, 2007

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Texas Higher Education Coordinating Board

Request for Offers for Consulting Services

The Texas Higher Education Coordinating Board (hereinafter referred to as THECB) is soliciting offers from organizations (hereinafter referred to as Consultant) for consulting services to advise THECB on the Texas Association of Developing Colleges (hereinafter referred to as TADC) Centers for Teacher Education. The ultimate objectives of this Request for Offers (hereinafter referred to as RFO) are to 1) facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of TExES/ExCET preparation; 2) work in collaboration with the Texas Higher Education Coordinating Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of TExES/ExCET preparation; 3) facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of TExES/ExCET preparation; and 4) report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

This Request for Offer is being made pursuant to authority granted under Texas Government Code, Chapter 2254, subchapter B, §2254.026 (relating to contracts with private consultants).

1. GENERAL BACKGROUND:

The Texas Legislature established the Centers for Teacher Education Program during the74th legislative session. The Texas Higher Education Coordinating Board was given the assignment of managing the program and has provided trusteed funds to support the programs at several historically Black Colleges. These institutions collectively form the Texas Association of Developing Colleges (TADC) and include Jarvis Christian College in Hawkins, Paul Quinn College in Dallas, Texas College in Tyler, Huston-Tillotson University in Austin, and Wiley College in Marshall. These colleges are private, general academic, minority-serving institutions and the funds appropriated are used for the purpose of supporting their centers for teacher education. The purpose of the Centers for Teacher Education at the participating institutions is to 1) recruit, train and place qualified minorities in the teaching profession; 2) integrate technology into the institutions? teacher preparation programs; and 3) provide and participate in at least two courses per semester via distance education technologies.

THECB retains a small percentage of the appropriations made for the teacher education centers for the costs of on-site monitoring and distribution of funds and, uses a portion of the amounts retained to obtain the services of a consultant to facilitate and coordinate the process of curriculum development and program redesign to improve teacher preparation at the participating institutions. The consultant assists with the administrative oversight of the various teacher education activities, coordinates the quarterly meetings that are held in Dallas, and works closely with THECB staff.

2. CONTRACT TERM:

2.1 The contract resulting from this RFO, shall commence on the execution date and shall terminate on August 31, 2008 or upon the completion of Consultant's work described herein, whichever occurs first, unless terminated earlier pursuant to terms and conditions of the anticipated contract resulting from this RFO.

3. SCOPE OF WORK:

3.1 Overview

Consultant shall facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of TExES/ExCET preparation; work in collaboration with the Texas Higher Education Coordinating Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of TExES/ExCET preparation; facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of TExES/ExCET preparation; and report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements and other evaluative measures.

Consultant shall be solely responsible and accountable for managing and completing all activities, tasks, milestones and deliverables in accordance with the Scope of Work and the deliverables commitment of this RFO. Assignment of THECB staff to assist Consultant in its responsibility shall in no way release the Consultant from its responsibility for completing any work or delivering any products set forth in this RFO, its Statement of Work or resulting contract.

3.2 Phase I - Proposal

Consultant shall provide to THECB a proposal of services to be performed, a proposed plan of action to be taken to achieve the goals set forth in this agreement, and evaluation of the attainment of the goals and objectives set forth by the agreement. The proposal must include specific objectives and timelines for meeting each phase of the plan. The proposal must also include consultant's travel costs to TADC schools named in Section 1 or other sites within Texas.

3.2.1 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase I objectives;

2. propose a detailed description of the tasks, activities, resources and time lines for performing Phase I objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

3. provide a brief description of Consultant's qualifications to perform Phase I objectives;

4. describe Consultant's prior experience in performing Phase I type objectives, with an emphasis on prior experience with public sector contracts and describe how organizations responded to Consultant's recommendations; and

5. provide a list of references where Phase I type objectives were met, including for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

3.3 Phase II - Progress Reports

3.3.1 Consultant shall submit to THECB a progress report providing information on 1) all records of evidence of expenditure of funds to assist the TADC school's efforts to improve student recruitment and retention; 2) evidence of professional development activities at the TADC schools to date; 3) report on the extent to which library, mathematics, science, technology laboratories and other facilities at the TADC schools have been enhanced; 4) evaluation of changes in curricula to better match TExES/ExCET competencies and outcomes at TADC schools; 5) evaluation of the effectiveness of technology integration to date at TADC schools; 6) summary of expenditures for personnel related to improved educator preparation at TADC schools; and 7) summary evidence that library holdings have been enhanced in the areas of certification at TADC schools.

3.3.2 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase II objectives;

2. propose a detailed description of the tasks, activities, resources and time lines for performing Phase II objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

3. provide a brief description of Consultant's qualifications to perform the Phase II objectives;

4. describe Consultant's prior experience in performing Phase II type objectives with emphasis on prior experience with public sector contracts; and

5. provide a list of references where Phase II type objectives were met, including for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

3.4 Phase III - Final Report

3.4.1 Consultant shall submit a final report to THECB evaluating the effectiveness of the funds for improving teacher education at the TADC schools and detailing their progress to date in achieving the following: 1) improving the TExES/ExCET pass rate for TADC initial test-takers and final pass rates; 2) increasing the number of students enrolled in the teacher preparation program at TADC schools; 3) increasing the graduation rate of teacher preparation candidates at TADC schools; 4) integrating existing technology into teacher preparation at TADC schools; and 5) summary evidence that courses are sent per semester via distance education technologies at TADC schools.

3.4.2 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase III objectives;

2. propose a detailed description of the tasks, activities, resources and time lines for performing Phase III objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

3. provide a brief description of Consultant's qualifications to perform the Phase III objectives;

4. describe Consultant's prior experience in performing Phase III type objectives; and

5. provide a list of references where Phase III objectives were met, include for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

3.5 Audit

Consultant understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to audit or investigate the expenditure of state funds under this contract. Consultant further agrees to cooperate fully with the State Auditor's Office or its successor, including providing all records requested. Consultant will ensure that this clause concerning authority to audit state funds received indirectly by subcontractors through the Consultant and the requirement to cooperate is included in any subcontract it awards.

3.6 Contract Deliverables

3.6.1 Consultant shall, in a good and satisfactory manner, carry out the tasks necessary to provide analysis, advice, recommendations, performances and Deliverables as called for in this RFO and in accordance with the Scope of Work. Such performances shall be rendered at schools named in Section 1 or other sites within Texas as hereinafter named by THECB or its designee, unless THECB, or its designee, shall otherwise specify in writing.

3.6.2 Substantive Outlines. As an interim deliverable, Consultant shall produce and present to THECB, for review and approval, a substantive outline for the work and content for: Phase I, Phase II, and Phase III. The substantive content of each outline shall include at a minimum a proposed final report format and a substantive discussion of the approach and methodology for the work to be performed. THECB and Consultant shall adjust or revise the scope of each outline to more clearly define the Scope of Work.

3.6.3 Draft Reports. As an interim deliverable, Consultant shall produce and present to THECB, for review and approval, an interim draft report for: Phase I, Phase II, and Phase III. This deliverable shall include: appendices with statistical data supporting findings, conclusions and recommendations. Consultant shall also include: charts, graphs, and other visual representations of core findings, conclusions and recommendations. The Consultant shall make such corrections to substance and content as identified by THECB. The Consultant shall make such adjustments and modifications to draft report as identified by THECB.

3.6.4 Final Reports. As a final contract Deliverable, Consultant shall produce a written report for: Phase I, Phase II, and Phase III. The specific organization and substantive content of each report shall be resolved throughout the project, with emphasis during the interim deliverable stages. Each report shall include the following topics and such other topics, which are specifically agreed upon between THECB and Consultant and the report must thoroughly resolve the particular issues unique to each deliverable:

Table of Contents

Executive Summary

Scope and Objectives

Summary of Significant observations and Conclusions

Overall Conclusions and Recommendations

Background

Detailed Scope and Objectives

Methodology

Assumptions

Detailed Findings and Observations

Analysis

Recommendations

Conclusion

Appendices

3.6.5 Status Reporting. During scheduled bi-weekly meetings, Consultant shall provide oral reports on Project progress and schedule, and a schedule of the next period's activities. Consultant shall document by written minutes of the meetings. Details of the period's activities shall include:

planned schedule versus actual schedule;

any problems encountered and status;

any failures to meet deadlines and proposed solutions; and

any deviations from the Scope of Work;

The Consultant shall disclose at the meeting the impact that any problems, failures or deviations have on the scheduled completion of tasks and work segments, the Phase, and the entire Project. Bi-weekly meetings may be by telephone conference call.

The Consultant shall submit to THECB a written report of schedule and/or content variances from the Scope of Work for each Phase, at the deliverable, task and activity levels, within five (5) working days from the time of their occurrence.

The Consultant shall submit monthly written reports to THECB that shall encompass:

the overall status of the Project, including unanticipated problems and delays and the impact on Project completion;

the prior month's accomplishments;

any outstanding problems and/or issues and proposed solutions; and

upcoming activities.

At a minimum, Consultant shall illustrate all upcoming activities using work plans specifically identifying tasks, personnel and begin and end dates.

3.6.6 Consultant and THECB shall develop a tentative schedule for periodic meetings with THECB. The meetings shall be for the purpose of providing information and additional guidance to Consultant in the performance of the Scope of Work. THECB may request interim advice from Consultant at such meetings. If appropriate, such meetings may coincide with regularly scheduled meetings to report status.

3.6.7 THECB shall have thirty (30) business days following delivery of the interim or final products, Deliverables or Services ("Acceptance Period"), to accept or reject any products, Deliverables or Services ("Deliverable") tendered by Consultant in performance under this RFO or resulting contract. Tendering to THECB a Deliverable for Acceptance constitutes a certification by the Consultant that the Deliverable fully meets all of the requirements in the RFO, Scope of Work and any resulting contract. In the event THECB elects to reject a Deliverable during the Acceptance Period, THECB shall notify Consultant in writing of such rejection. THECB shall assist Consultant in identifying the error, type of error or inadequacy of the Deliverable, to permit Consultant to understand the cause of the error or inadequacy and correct the error or inadequacy. Upon Consultant's resolution of any errors or inadequacies, identified during the Acceptance Period, the Deliverable shall be resubmitted to THECB for acceptance or rejection as stated above.

Acceptance of the Deliverable(s) shall be in writing by an authorized representative of THECB ("Acceptance").

3.6.8 Time is of the essence in completing the Deliverables Phases I-III Deliverables. Completion for the Deliverables for Phases I-III is required no later than August 8, 2008. Consultant should provide proposed completion dates in the format below in order to meet the project completion date of August 31, 2008.

Phase I:

Substantive Outline: tendered to THECB on or before September 21, 2007;

Interim Draft Report: tendered to THECB on or before October 5, 2007;

Final Report: tendered to THECB on or before October 26, 2007;

Status Reports, according to the schedule;

In-person-report(s).

Phase II:

Substantive Outline: tendered to THECB on or before November 9, 2007;

Interim Draft Report: tendered to THECB on or before January 11, 2008;

Final Report: tendered to THECB on or before March 3, 2008;

Status Reports, according to the schedule;

In-person-report(s).

Phase III:

Substantive Outline: tendered to THECB on or before May 2, 2008;

Interim Draft Report: tendered to THECB on or before June 13, 2008;

Final Report: tendered to THECB on or before August 8, 2008

Status Reports, according to the schedule;

In-person-report(s).

3.6.9 As an additional Deliverable, Consultant shall make "in person" presentations of its findings, analysis, conclusions and recommendations on such dates, times, and places in Austin, Travis County, Texas as requested by THECB. Such presentations may include audiences internal or external to THECB. THECB anticipates that no more than two or three such presentations shall be required. These presentations may occur, within an 18-month time frame following the Acceptance of the final report(s).

4. OFFER PROCESS

4.1 Questions relating to the RFO. Consultant is expected to examine this Request for Offers (RFO) carefully, understand the terms and conditions for providing the pertinent services, and respond completely. Failure to respond completely may result in disqualification. Questions about this RFO shall be directed, in writing only, to the address provided below, on company letterhead or via e-mail. Verbal questions and explanations are not permitted. Electronic submissions by facsimile shall be accepted. THECB reserves the right to provide or not to provide additional clarification in response to Consultant's questions. To be eligible to receive Consultant questions and responses to this RFO, if any, the Consultant, must file a written letter of interest with THECB no later than 2:00 p.m. on Friday, August 3, 2007. No inquiries or questions shall be answered after 2:00 p.m. on Friday, August 3, 2007 to allow ample distribution time for any changes. Any questions or letters of interest regarding this RFO may be directed to:

Dr. Susan Hetzler, Program Director for Educator Preparation

Academic Affairs and Research Division

Texas Higher Education Coordinating Board

P. O. Box 12788

Austin TX 78711

4.2 Delivery of Offer. A signed original and five (5) copies of the offer must be received by THECB, no later than 5:00 p.m., Central Time, August 24, 2007. Any offer received after the specified time and date shall not be considered. Conditioned on THECB's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code §2254.028, THECB anticipates entering into the resultant contract on or about September 1, 2007. The Consultant's offers shall be delivered to:

Dr. Susan Hetzler, Program Director for Educator Preparation

Academic Affairs and Research Division

Texas Higher Education Coordinating Board

1200 East Anderson Lane

Austin TX 78752

P.O. Box 12788, Austin TX 78711

4.3 THECB Reservation of Rights. THECB has sole discretion and the absolute right to reject any and all offers, terminate this Request for Offers or amend, delay or re-issue this Request for Offers. THECB reserves the right to remedy technical errors in the RFO process, waive any informalities and irregularities relating to any or all Offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any Offer to THECB. THECB further reserves the right to accept one or more offers and contract for any grouping or individual Deliverables described in this RFO. The issuance of this Request for Offers does not constitute a commitment by THECB to award any contract. THECB intends any material provided in this Request for Offers only and solely as a means of identifying the scope of services and qualifications sought.

4.4 Expenses for Preparing Offer. THECB shall not pay any cost incurred by a prospective Consultant in the preparation of a response to this Request for Offers and such costs shall not be included in the budget of the prospective Consultant submitted pursuant to this Request for Offers. The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Offers. In the event that the prospective Consultant is engaged to provide the services contemplated by this Request for Offers, any expenses incurred by the prospective Consultant associated with the negotiation and execution of the contract for the engagement shall remain the obligation of the Consultant.

4.5 Non-responsive Offers. Failure to respond to all required portions of this RFO may result in the Consultant's response being deemed non-responsive. If a Consultant's response is deemed non-responsive by THECB, the response shall be disqualified. Offers must be signed by an officer or principal of the Consultant, however, they may be signed by an agent if accompanied by written evidence of authority.

4.6 Duration of Offer. All provisions in Consultant's Offer, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or if an Offer is selected, throughout the entire term of the Contract. Offers may be withdrawn in writing prior to the date and time set for receipt of Offers.

4.7 Negotiation with Consultant. Preliminary and final negotiations with top-ranked prospective Consultants may be held at the discretion

of THECB. THECB may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective Consultants submitting Offers pursuant to this request. During the negotiation process, THECB and any prospective Consultant(s) with whom THECB chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of THECB. Statements made by a prospective Consultant in the Offer packet or in other appropriate written form shall be binding unless specifically changed by the Consultant, in writing, during final negotiations. A contract award may be made by THECB without negotiations if THECB determines that such an award is in THECB's best interest.

4.8 Selection Criteria. THECB shall conduct an evaluation of all offers that conform to the requirements of this RFO. In selecting a consultant, THECB shall: (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and (2) if other considerations are equal, give preference to a consultant whose principal place of business is in the State of Texas or who shall manage the consulting contract wholly from an office in the State of Texas. Conforming offers shall be reviewed by a Selection Committee consisting of THECB staff members.

4.9 Award/Contract Subject to Available Appropriations. This Request for Offers and any contract which may result from it are subject to appropriation of State funds and the Request for Offers and/or contract may be terminated at any time if such funds are not available.

4.10 Public Information. All offers are considered to be public information subsequent to an award of the contract. All information relating to Offers shall be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents shall be presumed to be public unless a specific exception in that Act applies. Prospective Consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, offers must specify the specific information which the prospective Consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption that the prospective Consultant believes protects that information must be cited. THECB shall assume that an Offer submitted to THECB contains no proprietary or confidential information if the prospective Consultant has not marked or otherwise identified such information in the offer at the time of its submission to THECB.

4.11 Negotiation of Contract Terms and Conditions. At any time after the offers are opened, THECB may negotiate contract terms and conditions with one or more of the Consultants. An award of a contract is expressly conditioned upon THECB and Consultant reaching an agreement on contract terms and conditions. THECB reserves the sole right, in its discretion, to determine if contract terms and conditions are acceptable. If the Consultant and THECB are unable to reach an agreement on the contract terms and conditions, THECB shall disqualify that Consultant, and then THECB shall negotiate contract terms and conditions with the next best Consultant.

4.12 Return of Offers After Selection Process. All offers become property of THECB upon receipt and shall not be returned.

4.13 Ethics Standards. No person shall participate or assume a responsibility in the implementation and execution of this RFO process including, but not limited to, the evaluation of offers and selections of Consultant's, when such participation constitutes a conflict of interest as defined by state law or executive order. After the RFO is published, THECB or any employee shall not furnish any technical information, or solicit offers and/or prices for its requirements or take any type of action which would or could be construed to give a direct or indirect advantage or disadvantage to any potential Consultant.

4.14 Restrictions on Communication. After the RFO has been issued, Consultant is prohibited from communicating with THECB staff regarding the RFO or offers, with the following exceptions:

Dr. Susan Hetzler, in writing;

The Committee, if interviews are conducted;

THECB reserves the right to contact any Consultant for clarification after responses are opened and/or to further negotiate with any Consultant if such is deemed desirable by THECB.

THECB shall not schedule meetings with representatives of any Consultant to discuss offers, and Consultant should not contact THECB employees to explain, clarify or discuss their Offers before an award has been made except as set out in this section. Violation of this provision may lead to disqualification from this process.

5. CONTENT OF OFFERS

5.1 All Offers must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective Consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

5.2 A Table of Contents must be included with respective page numbers opposite each topic. The Offer must contain the following completed items in the following sequence:

Transmittal Letter: A letter addressed to Dr. Susan Hetzler, Program Director for Educator Preparation, Academic Affairs and Research Division, Texas Higher Education Coordinating Board, PO Box 12788, Austin, TX 78711 that identifies the person or entity submitting the Offer and includes a commitment by that person or entity to provide the services required by THECB. The letter must specifically identify that this Offer is in reference to THECB Texas Association of Developing Colleges-Centers for Teacher Education RFO. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Offers." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the Offer from further consideration at THECB's discretion. The letter must state, "The Offer enclosed is binding and valid at the discretion of THECB."

Executive Summary: The Offer must include a summary of the contents of the Offer, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the Offer.

Project Offer: The Offer must track and reference each section number in Section 3 Scope of Work. Consultant should provide a substantive description of how Consultant proposes to satisfy each item. If Consultant cannot satisfy a particular item or requirement, then Consultant must clearly identify the items or requirements it cannot satisfy. If Consultant believes it can best meet the needs of THECB by suggesting a modification to the Scope of Work, please suggest alternatives. If an alternative is proposed, please include a separate section identified as "Alternative Offer to Section X.X." THECB reserves the right to not consider alternative Offers. If a response requires Consultant to assume facts not presented in the RFO, Consultant must clearly identify such assumed facts. If a section requests specific information, please include the requested information.

Cost Offer: THECB is interested in awarding a fixed fee contract. Because THECB may enter into a contract for all or some of the deliverables, please identify each deliverable and the corresponding fee and include a proposed schedule of payments. Consultant is welcome to suggest alternative fee Offers, but if an alternative is offered, please clearly identify that the fee Offer is an alternative. The THECB reserves the right to not consider alternative Offers.

Qualifications: While THECB is interested in the experience and qualifications of Consultant's firm or company, THECB is particularly interested in the experience of the individual staff Consultant intends to apply to this engagement. Therefore, please include information relating to the firm's or company's experience and qualification and please attach detailed resumes for each staff that Consultant intends to apply to this engagement. The resumes should identify the specific experience, projects and assignments for each staff offered. Emphasis should be placed on similar projects within the public sector and/or higher education.

References: Prospective Consultants shall provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective Consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Offers.

2. The services must have been provided by the prospective Consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Offers.

3. The reference company or entity must not be affiliated with the prospective Consultant in any ownership or joint venture arrangement.

4. References must include the company or entity name, address, contact name, and telephone number for each reference. THECB may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective Consultant throughout the performance of the engagement and who can address questions about the performance of the prospective Consultant from personal experience. References shall accompany the Offer.

5. For each such reference, the prospective Consultant shall provide a signed release from liability in the form of a letter addressed to the reference company or individual signed by Consultant for each reference provided in response to this requirement. The release from liability shall absolve the specified reference company or entity from liability for information provided to THECB concerning the prospective Consultant's performance of its engagement with the reference.

Financial Condition: As part of any Offer submission, the prospective Consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective Consultant's current financial condition. All offers shall include the Consultant's State of Texas vendor identification number or federal tax identification number. THECB reserves the right to request such additional financial information as it deems necessary to evaluate the prospective Consultant, and by submission of an Offer, the prospective Consultant agrees to provide same. The prospective Consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective Consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective Consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

Certifications/Affirmations/Disclosures: By signing the transmittal letter and submitting an Offer, Consultant makes and agrees to make the following certifications, affirmations and disclosures. If any explanation or qualification is required for any certification, affirmation or disclosure, you must include such explanation or qualification in your transmittal letter. A false statement or misleading statement in this section is a material breach of contract and shall void the submitted Offer or any resulting contracts. Please restate each of the following certifications, affirmations or disclosures in this section of your Offer.

1. The Consultant has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer.

2. The Consultant is not currently delinquent in the payment of any franchise tax owed the State of Texas.

3. Neither the Consultant nor the firm, corporation or partnership or institution represented by the Consultant or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly the Offer made to any competitor or any other person engaged in such line of business.

4. The Consultant has not received compensation for participation in the preparation of the specification for this Offer.

5. Pursuant to Texas Family Code, §231.006 (relating to delinquent child support), the Consultant certifies that the individual or business entity named in this Offer is not ineligible to receive a specified payment and acknowledge that this contract may be terminated and payment may be withheld if this certification is inaccurate.

6. An Offer must include the names and Social Security Numbers of each person with at least a 25% ownership of the business entity submitting this Offer.

7. Pursuant to §2155.004 Government Code (relating to issuance of warrants to persons indebted to the State or who owe delinquent taxes to the State) the Consultant certifies that the individual or business entity named in this Offer is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

8. Consultant acknowledges and agrees that, to the extent Consultant owes any debt or delinquent taxes to the State of Texas, in accordance with §403.055(h), Government Code, any payments Consultant is owed under this Agreement shall be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Consultant owes the State of Texas until the debt or delinquent taxes are paid in full.

9. Pursuant to Article 2.45 of the Texas Business Corporation Act, Consultant must certify that it is not delinquent in a tax owed to the State under Chapter 171 of the Texas Tax Code. Any Consultant who is delinquent may not be awarded a contract by the State.

10. With respect to all services, if any, purchased pursuant to this RFO, Consultant represents and warrants that it shall buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

11. Consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC §111.2.

12. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business

in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

13. If the Consultant is an individual who has previously been employed by THECB or any other Texas state agency at any time during the two years preceding their Offer, the Consultant must disclose the following:

the nature of the previous employment with THECB or any other state agency;

the date the employment was terminated;

the annual rate of compensation for the employment at the time of the Consultant's termination.

If a Consultant is subject to this disclosure and fails to make such a disclosure, the Offer shall be disqualified.

TRD-200702689
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: June 27, 2007

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Single Family Mortgage Revenue and Refunding Bonds

Taxable Single Family Mortgage Revenue Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 221 East 11th Street, Room 107, Austin, Texas, at 12:00 noon on August 2, 2007, with respect to (i) an issue of tax-exempt single family mortgage revenue bonds to be issued in one or more series in an aggregate face amount of not more than $161,000,000 (the "Tax-Exempt New Money Bonds"), (ii) an issue of tax-exempt single family mortgage revenue refunding bonds to be issued in one or more series in an aggregate face amount of not more than $30,000,000 (the "Tax-Exempt Refunding Bonds" and together with the Tax Exempt New Money Bonds, collectively, the "Tax-Exempt Bonds") and (iii) an issue of taxable single family mortgage revenue bonds to be issued in an aggregate face amount of not more than $30,000,000 (the "Taxable New Money Bonds" and together with the Tax-Exempt Bonds, collectively, the "Bonds").

A portion of the proceeds of the Tax-Exempt New Money Bonds will be used directly to make single family residential mortgage loans. A portion of the proceeds of the Tax-Exempt Refunding Bonds will be used to refund all or a portion of the Department's outstanding Single-Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes, Series A, thereby making funds available to make additional single family residential mortgage loans. A portion of the Taxable New Money Bonds will be used directly to make single family residential mortgage loans. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas, and are expected to be in an aggregate estimated amount of $221,000,000.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income. In addition, substantially all of the borrowers under the programs will be required to be persons who have not owned a principal residence during the preceding three years (except in the case of certain targeted area residences). Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Heather Hodnett at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; (512) 475-1899.

Persons who intend to appear at the hearing and express their views are invited to contact Heather Hodnett in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Heather Hodnett prior to the date scheduled for the hearing.

The Department's website: www.tdhca.state.tx.us/hf.htm.

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Heather Hodnett at (512) 475-1899 at least three days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds.

TRD-200702669
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 26, 2007

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Texas Department of Insurance

Company Licensing

Application to change the name of ATLANTIC TITLE INSURANCE COMPANY to TRANSUNION NATIONAL TITLE INSURANCE COMPANY, a foreign title company. The home office is in Columbia, South Carolina.

Application to change the name of WINDSOR INSURANCE COMPANY to INFINITY STANDARD INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Indianapolis, Indiana.

Application to change the name of ATLANTA SPECIALTY INSURANCE COMPANY to INFINITY SPECIALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Cincinnati, Ohio.

Application to change the name of ATLANTA CASUALTY COMPANY to INFINITY CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Cincinnati, Ohio.

Application to change the name of LEADER INSURANCE COMPANY to INFINITY AUTO INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Cincinnati, Ohio.

Application to change the name of LEADER SPECIALTY INSURANCE COMPANY to INFINITY INDEMNITY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Indianapolis, Indiana.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200702690
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 27, 2007

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Notice of Public Hearing 2006 Texas Title Insurance Biennial Hearing

Notice is hereby given that a title insurance hearing will be held before the Commissioner of Insurance. The hearing will consist of a rulemaking phase and a ratemaking phase. The rulemaking phase, under Docket No. 2668, will be for the consideration of rules, forms, and endorsements, and related matters not having primary rate implications. The ratemaking phase, under Docket No. 2669, will be for the consideration of fixing the premium rate and other matters with direct rate implications. The hearing for the rulemaking phase will begin at 9:30 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, on September 5, 2007, and continue thereafter at dates, times, and places designated by the Commissioner until conclusion. The hearing for the ratemaking phase will begin at 9:30 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, on October 16, 2007, and continue thereafter at dates, times, and places designated by the Commissioner until conclusion. The Commissioner may conduct both phases of the hearing; however, the ratemaking phase of the hearing can be conducted by the State Office of Administrative Hearings in accordance with Chapter 40, Texas Insurance Code at the direction of the Commissioner or at the written request of any person seeking admission as a party to the ratemaking phase of the hearing pursuant to Chapter 2703. The Commissioner shall certify which matters have rate implications to be considered in the ratemaking phase of the hearing. *This hearing is not a hearing required by SB 1153, 80th Legislative Regular Session, relating to the use of Title Insurance to insure certain interests in personal property.*

Authority, Jurisdiction, Statutes and Rules Involved

The Commissioner has jurisdiction over the promulgation of rules and premium rates, over amendments to or promulgation of approved forms, and over other matters set out in this notice pursuant to Texas Insurance Code, §31.021, Chapters 2501, 2703, and Section 2551.003 and pursuant to the Texas Administrative Code, Title 28, Chapter 9. The procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure Act (Texas Government Code, Chapter 2001).

Matters to be Considered

The Commissioner will consider testimony presented and information filed by title insurers, title agents, the Texas Department of Insurance staff, and other interested parties relating to the following issues:

Docket 2668

Form and Rulemaking Phase

Item 2006-1 - Submission by Texas Land Title Association to adopt a new Co-Insurance Endorsement (Form T-___) to accommodate commercial lenders and owners who often request this endorsement in multi-state, multi-site, and other large transactions.

Item 2006-2 - Submission by Texas Land Title Association to amend Procedural Rule P-6 to authorize a Co-insurer to issue a Co-insurance Endorsement to another Title Insurer's Owner or Mortgagee Policy when the co-insurance transaction exceeds fifteen million dollars.

Item 2006-3 - Submission by Texas Land Title Association to repeal the current Verification of Services Rendered Form T-00 and adopt a new Form T-00 to organize the information each entity participating in the transaction must provide and to assist underwriters in reporting that information to the Department.

Item 2006-4 - Submission by Texas Land Title Association to amend the Supplemental Coverage Manufactured Housing Unit Endorsement Form T-31.1 to conform to the new American Land Title Association form by clarifying the insurance against personal property liens and by ensuring that a foreclosure of an insured mortgage may be conducted by one procedure.

Item 2006-5 - Amended submission by Texas Land Title Association to amend the Revolving Credit Endorsement Form T-35 to change the name to the Revolving Credit/Future Advance Endorsement Form T-35 and to conform to the American Land Title Association form by expanding coverage to the lender.

Item 2006-6 - Submission by Texas Land Title Association to amend the Residential Real Property Affidavit T-47 to remove specific language in the affidavit that requires the name of the title company to be identified and to insert generic language to allow the affidavit to be prepared and executed early in the transaction process.

Item 2006-7 - Submission by Texas Land Title Association to adopt a new Procedural Rule (P-___) that incorporates the procedural portion of Rate Rule R-2.(d) concerning a policy issued to a qualified intermediary under IRS Code 1031 and also contains deletions and improved formatting.

Item 2006-8 - Submission by Texas Land Title Association to adopt a new Procedural Rule (P-___) regarding the treatment of subordinate liens and leases in order to better alert title companies to comply with the instruction in Procedural Rule P-11.b.(8).

Item 2006-9 - Submission by Texas Land Title Association to adopt a new Procedural Rule (P-___) in conformity with Insurance Code, §2704.051 and §2704.052 to require an owner's policy be issued in connection with a Mortgagee Policy unless the person acquiring title rejects it.

Item 2006-10 - Submission by Texas Land Title Association to adopt a new Procedural Rule (P-___) to include procedures currently in other rate and procedural rules into one rule relating to determining the correct amount of insurance in owner and mortgagee polices.

Item 2006-11 - Submission by Texas Land Title Association to amend Procedural Rule P-1 to rename the "Owner Policy" and the "Mortgagee Policy" to coincide with the terminology utilized in the corresponding American Land Title Association policies and to provide that the new

terminology be incorporated into newly printed or electronically generated forms.

Item 2006-12 - Submission by Texas Land Title Association to amend Procedural Rule P-7 to incorporate the language from Bulletin 157 into the procedural rules and to resolve the question as to whether it is permissible to include the "successor in ownership" language as part of the Proposed Insured in a Commitment.

Item 2006-13 - Submission by Texas Land Title Association to amend Procedural Rule P-17 to allow for electronic filing and recording of documents and to withdraw Bulletin 163 to allow a pass-through to consumers of electronic filing fees.

Item 2006-14 - Submission by Texas Land Title Association to amend Procedural Rule P-21 to make the terms used in the rule consistent with Insurance Code, §2651.203 and to update references to the Commissioner of Insurance.

Item 2006-15 - Submission by Texas Land Title Association to amend Procedural Rule P-28 to eliminate the need for a company owning multiple title insurance companies to make multiple course submissions and/or assignments between the related title insurance company providers.

Item 2006-16 - Submission by Texas Land Title Association to amend Procedural Rule P-45 to make the rule consistent with the federal requirements regarding the Maximum Claim Amount for FHA-insured loans and to allow the insured amount to be determined by lenders through a lender estimation of the maximum amount that may be secured by lien.

Item 2006-17 - Submission by Texas Land Title Association to amend Procedural Rule P-53 to remove the sunset provision contained within the rule and to ensure that the rule will remain in effect beyond January 1, 2008.

Item 2006-18 - Submission by Texas Land Title Association to amend Administrative Rule L-2 to allow a Direct Operation, Title Insurance Agent, or an attorney licensed as an escrow officer to contract with a person to employ that person as a bona fide employee to perform any duty or work, other than that of an escrow officer, at or before an application for that person to be licensed as an escrow officer is filed with the Department and to remove the Department's ability to deny an application or decline to renew an escrow license while an investigation, audit inquiry, disciplinary action, or allegation of a violation is pending.

Item 2006-19 - Submission by Texas Land Title Association to amend Administrative Rule L-1 to provide that the Department must send notice of renewal to each agent at least 45 days prior to the expiration of the agent's license and, if not renewed, within 45 days after the license expires.

Item 2006-20 - Submission by Texas Land Title Association to amend Administrative Rule L-1 to deny the Department the ability to deny an application or decline to renew the license of an agent while an investigation, audit inquiry, disciplinary action, or allegation of a violation is pending.

Item 2006-21 - Submission by Texas Land Title Association to amend Administrative Rule L-3 to deny the Department the ability to deny an application or decline to renew the license of a Direct Operation while an investigation, audit inquiry, disciplinary action, or allegation of a violation is pending.

Item 2006-22 - Submission by Texas Land Title Association to amend the Minimum Standards, Specific Instructions and Report forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys, and Attorney's Licensed as Escrow Officers pertaining to the Policy Guaranty Fee and Guaranty Assessment Recoupment Charge to provide that maintaining a policy guarantee fee escrow account and a guaranty assessment recoupment charge escrow account separate from the agent's standard audited escrow account is optional.

Item 2006-23 - Submission by Stewart Title Guaranty Company to amend the Owner Policy of Title Insurance Form T-1 based on the new 2006 American Land Title Association Owner's Policy.

Item 2006-24 - Amended submission by Texas Land Title Association regarding the submission by Stewart Title Guaranty Company to amend the Owner Policy of Title Insurance Form T-1 based on the new 2006 American Land Title Association Owner's Policy.

Item 2006-25 - Submission by Stewart Title Guaranty Company to amend the Mortgagee Policy of Title Insurance Form T-2 based on the new 2006 American Land Title Association Loan Policy.

Item 2006-26 - Amended submission by Texas Land Title Association regarding the submission by Stewart Title Guaranty Company to amend the Mortgagee Policy of Title Insurance Form T-2 based on the new 2006 American Land Title Association Loan Policy.

Item 2006-27 - Submission by Stewart Title Guaranty Company to amend Procedural Rule P-1 to make conforming changes based on the proposed amended Owner and Mortgagee Policies.

Item 2006-28 - Submission by Stewart Title Guaranty Company to amend Procedural Rule, P-32 to clarify time periods for retention of documents and to conform this procedural rule to the provisions of UETA and E-SIGN.

Item 2006-29 - Amended submission by Texas Land Title Association regarding the submission by Stewart Title Guaranty Company to amend Procedural Rule, P-32 to clarify time periods for retention of documents and to conform this procedural rule to the provisions of UETA and E-SIGN.

Item 2006-30 - Submission by Stewart Title Guaranty Company to amend Procedural Rule P-36 to conform with the proposed, amended Owner Policy and Mortgagee Policy and to make other changes including increasing the threshold for arbitral matters to two million dollars and deleting the choice of law provision.

Item 2006-31 - Submission by Stewart Title Guaranty Company to amend Procedural Rule P-37 to conform with the proposed, amended Owner Policy and Mortgagee Policy.

Item 2006-32 - Submission by Stewart Title Guaranty Company to amend the Facultative Reinsurance Agreement Form T-18.1 based on changes contained in the new American Land Title Association's Reinsurance Agreement and to clarify a reinsurer's payment obligations.

Item 2006-33 - Submission by Stewart Title Guaranty Company to amend the Restrictions, Encroachments, Minerals Endorsement T-19 to conform to the new American Land Title Association Endorsement 9.3-06, which may be issued with the proposed amended Mortgagee Policy (T-2).

Item 2006-34 - Submission by Stewart Title Guaranty Company to amend the Restrictions, Encroachments, Minerals Endorsement - Owner Policy T-19.1 to conform to the new American Land Title Association Endorsement 9.5-06, which may be issued with the proposed amended Owner Policy (T-1).

Item 2006-35 - Submission by Stewart Title Guaranty Company to amend the Tertiary Facultative Reinsurance Agreement (Type I) Form T-21.1 to conform to the proposed amendments to the Facultative Reinsurance Agreement Form T-18.1.

Item 2006-36 - Submission by Stewart Title Guaranty Company to amend the Tertiary Facultative Reinsurance Agreement (Type II) Form T-21.2 to conform to the proposed amendments to the Facultative Reinsurance Agreement Form T-18.1.

Item 2006-37 - Submission by Sierra Title Group and Sierra Title Insurance Guaranty Company, Inc. to amend Administrative Rule L-1 to provide that, upon the filing of an application for a title insurance agent license, the Department must notify all currently licensed title insurance agents in the county in which the sponsoring title insurance company applicant is seeking approval and to provide that any currently licensed agent may make a written request to the Department for an on-site audit of the applicant's abstract plant facilities.

Item 2006-38 - Submission by the Texas Department of Insurance to adopt a new Procedural Rule (P-___) to provide better auditing tools regarding Insured Closing and Settlement Letters and to ensure compliance with Texas Insurance Code Chapter 2702.

Item 2006-39 - Submission by the Texas Department of Insurance to adopt a new Procedural Rule (P-___) to clarify that Texas Insurance Code §§521.101 - 521.103 applies to the title industry and to ensure title industry compliance with the statute.

Item 2006-40 - Submission by the Texas Department of Insurance to amend Procedural Rule P-1, subparagraph f. to conform the definition of closing the transaction to the statutory definition of closing the transaction in Insurance Code, §2501.006.

Item 2006-41 - Submission by the Texas Department of Insurance to amend Procedural Rule P-22 to clarify the terms fee and payment, to clarify who may receive payment, to reduce administrative inefficiency associated with remittance, to prevent certain types of prohibited conduct, and to update references to revised Insurance Code provisions.

Item 2006-42 - Submission by the Texas Department of Insurance to amend Procedural Rule P-53 to remove the sunset provision contained within the rule and to ensure that the rule will remain in effect beyond January 1, 2008.

Item 2006-43 - Submission by the Texas Department of Insurance to amend Insuring Forms T-7, T-1, T-1R, T-2, T-2R, and T-44 to remove outdated language regarding the consumer complaint notice.

Item 2006-44 - Submission by the Texas Department of Insurance to amend the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers in Section V to clarify consumer charges and to make the language more precise in Specific Areas and Procedures, 5, while adding additional language to Minimum Escrow Account Procedures and Internal Controls, 18, to help identify fraudulent real estate transactions.

Item 2006-45 - Submission by the Texas Department of Insurance to amend Administrative Rule L-1 to clarify that a title insurance agent may not commence business in a county until authorized by the Department.

Item 2006-46 - Submission by the Texas Department of Insurance to amend Administrative Rule L-2 to require attorneys who are licensed escrow officers to close the transaction in the title agent's name, to require attorneys who are licensed escrow officers to use the title agent's escrow account, and to require escrow officers to keep a current address on file with the Department.

Item 2006-47 - Submission by the Texas Department of Insurance to amend Administrative Rule L-2 to clarify that a non-attorney employee of an attorney must be licensed as escrow officer prior to performing the duties of an escrow officer.

Item 2006-48 - Submission by the Texas Department of Insurance to amend Administrative Rules L-1 and L-2 to ensure that the Title Agent and Escrow Officer licensing procedures are consistent with the Texas Business Organizations Code, which went into effect on January 1, 2006, and to simplify the merger, exchange, and conversion process when an organizational restructuring results in a less than 50% change in ownership.

Item 2006-49 - Submission by the Texas Department of Insurance to amend Administrative Rule G-1 to clarify that Policy Guaranty Fees must be postmarked on or before the due date to be considered timely.

Item 2006-50 - Submission by Texas Department of Insurance to amend the Texas Title Insurance Statistical Plan.

Complete copies of the agenda items may be obtained from the Office of the Chief Clerk. Please submit your request to:

Office of the Chief Clerk

Texas Department of Insurance (Mail Code 113-2A)

P.O. Box 149104

Austin, Texas 78714-9104

Notwithstanding the foregoing, the Department reserves the right at any time to propose for adoption, pursuant to Texas Insurance Code §§31.002, 2703.206, and 2703.207 and the Administrative Procedure Act, any rule for the regulation of title insurance.

Docket 2669

Ratemaking Phase

Item 2006-51 - Submission by Texas Land Title Association to adopt a Schedule of Basic Premium Rates for Title Insurance for the next calendar year and subsequent years until changed by subsequent order of the Commissioner.

Item 2006-52 - Submission by Texas Land Title Association to adopt a new Texas Limited Coverage Residential Chain of Title Policy (Form T-___) to address fraudulent residential mortgage transactions.

Item 2006-53 - Submission by Texas Land Title Association to adopt a new Procedural Rule (P-___) regarding the proposed Texas Limited Coverage Residential Chain of Title Policy (T-___) to require that the new policy only be issued by the agent in the county where the property is located.

Item 2006-54 - Submission by Texas Land Title Association to adopt a new Rate Rule (R-__) to provide a fair and equitable charge for the proposed Texas Limited Coverage Residential Chain of Title Policy.

Item 2006-55 - Submission by Texas Land Title Association to amend Rate Rule R-2 to address the situation in which a form of coverage may become effective before a ruling has been made regarding the proposed rate and to delete a portion of the rule that has been included in a new, proposed procedural, which is contingent upon adoption of the proposed procedural rule.

Item 2006-56 - Amended submission by Texas Land Title Association to amend Rate Rule R-3 to move the provision for the Increased Value Endorsement to proposed, amended Rate Rule R-15 and to delete portions of Rate Rule R-3 that have been included in a new, proposed procedural rule in Agenda Item 2006-8, which is contingent upon adoption of the proposed procedural rule.

Item 2006-57 - Submission by Texas Land Title Association to amend Rate Rule R-4 to delete portions of this rule that have been included in a new, proposed procedural rule in Agenda Item 2006-8, which is contingent upon adoption of the proposed procedural rule, and to change

the words "an adjustable rate mortgage" to "a variable rate mortgage" in keeping with the form name change in November 2005.

Item 2006-58 - Submission by Texas Land Title Association to amend Rate Rule R-7 to clarify that each policy bears a separate premium and to assist the policy typist in associating a collected premium with a produced policy.

Item 2006-59 - Submission by Texas Land Title Association to amend Rate Rule R-15 to incorporate certain portions excised from Rate Rule R-3 and making a direct reference to certain items as opposed to using cross-references.

Item 2006-60 - Submission by Texas Land Title Association to amend Rate Rule R-18 to re-name the rate rule, to revise it for readability, and to add a provision concerning current refinancing practices in which two permanent loans are used to refinance a single construction loan.

Item 2006-61 - Submission by Texas Land Title Association to amend Rate Rule R-29C to address the need for two separate Statistical Codes to delineate whether or not an amendment of exception to area and boundaries is purchased with the policy.

Item 2006-62 - Submission by Rattikin Title Company to amend Rate Rule R-30 to allow the $100 fee to be charged for each endorsement to a policy when the policy is issued with multiple Access Endorsements.

Item 2006-63 - Submission by Rattikin Title Company to amend Rate Rule R-32 to allow the $100 fee to be charged for each endorsement to a policy when the policy is issued with multiple Contiguity Endorsements.

Item 2006-64 - Submission by Sierra Title Group and Sierra Title Insurance Guaranty Company, Inc. to adopt a new Procedural Rule (P-___) to ensure that title insurance companies do not receive more than 50% of their business through Affiliated Business Arrangements, to provide that 90% of the business of a title insurance company operating in connection with an Affiliated Business Arrangement must involve property located within the county in which the company is licensed, to provide notice requirements concerning Affiliated Business Arrangements, and to ensure that such arrangements are not coercive.

Item 2006-65 - Submission by Sierra Title Group and Sierra Title Insurance Guaranty Company, Inc. to amend Procedural Rule P-24 to provide restrictions on a title insurance company, agent, or direct operation regarding written agreements that deviate from the premium split set forth in P-24.

Item 2006-66 - Submission by Sierra Title Group and Sierra Title Insurance Guaranty Company, Inc. to amend Procedural Rule P-58 to provide that the required report on directly issued policies be compiled and submitted to the Department on a quarterly basis to ensure that P-24 violations are timely detected.

Item 2006-67 - Submission by the Texas Department of Insurance to amend Procedural Rule P-24 to set reasonable percentage rates for payment for services for furnishing title evidence and title examination and to remove language in the rule that often prevents urban and rural agents from receiving the same amount of premium for the same work.

In the Ratemaking Phase the parties shall consider and provide evidence on all relevant and necessary points, including but not limited to:

1. Comments and proposals for alternative rating structures including, but not necessarily limited to, differences in rates or premium splits by geographic region (e.g., rural versus urban), by size of agency, and by type of business written.

2. The historical impact of changing property values and sales prices through the most recently available data on title premium revenues, independent of changes in title premium rates.

3. The historical impact of changing numbers of title insurance transactions through the most recently available data on title premium revenues and expenses, independent of title premium rates, in total, and separately for underwriters, affiliated agents, independent agents, and direct operations, and the possible effect of changes in the makeup and composition of different types of transactions (original, refinance, residential, commercial).

4. The historical annual changes in total title agent and title underwriter expenses through the most recently available data generally and in comparison to: premium growth; relevant measures of inflation; or any other relevant measure. Provide the information in total and separately for underwriters, affiliated agents, independent agents, and direct operations.

5. Factors and forces causing title agent and title underwriter expenses to grow at annual rates greater than, equal to, or less than relevant annual rates of inflation, with reference to the separate experience of underwriters, affiliated agents, independent agents, and direct agent operations.

6. The effect of, and possible measurement of, changes in productivity, including the impact of improvements in technology, on title agents' and underwriter costs of operation. Include likely future trends in such areas and the likely effects on future costs.

7. The historical changes in the number of market participants by type of market and type of participants (underwriters, affiliated agents, independent agents, and direct operations), in the aggregate and by county, including an analysis of the causes and impact of changes on overall costs over time.

8. The impact of reverse competition, generally described as a market in which the competitive efforts on the part of insurers and agents are directed towards the "producers" of business (realtors, real estate developers, lenders, attorneys, etc.) rather than the ultimate consumers of title insurance, and which, it is alleged, has the effect of unnecessarily increasing costs to the ultimate consumers. Provide a definition or description of the sorts of unnecessary costs to the ultimate consumers of title insurance that might arise from reverse competition and how these can be measured and how the existence of such costs might be treated in the ratemaking process.

9. Provide information on the extent to which agent and underwriter consolidations, startups, and withdrawals may have affected costs and title insurance rates, and provide suggestions as to how this might be treated in the ratemaking process.

10. Statistical studies on the effect of expense outliers for individual entities (underwriters and agents) in various expense categories (e.g., salaries, benefits, rent, etc.) or a combination of categories on overall expenses, and commentary on possible limitations to be placed on the use of such outliers in ratemaking.

11. The degree to which expenses are fixed or variable in relation to premium volume with reference to type and size of entity (underwriters, affiliated agents, independent agents, and direct agent operations) and the type of transaction (original, refinance, residential, commercial).

12. How the enactment of SB 1153 ("relating to the use of title insurance to insure certain interests in personal property") by the 80th Legislature may affect the costs associated with the use of title insurance to insure interests in real property through such things as economies of scale and its likely effect on rate needs to insure interests in real property.

13. According to the April 2007, report of the United States Government Accountability Office (GAO), the number of affiliated business arrangements (ABAs), defined as situations in which real estate or other professional are part or full time owners of title agencies, have been growing significantly in recent years. Provide commentary on the phenomenon in Texas, how this might affect costs and rates, and how abuses, if any, might be addressed in the ratemaking system.

14. Alternative projections of expected losses and expenses.

15. Alternative title insurance underwriting profit provision models.

16. Information on the split of the title premium between title agents and underwriters.

17. The effect on the split of the title premium between title agents and underwriters, of the amount of expenses, if any, disallowed in determining the overall rate level, and consideration of changes to the split.

18. The impact that profits earned on escrow functions, tax certificates, recording fees, and other miscellaneous income should have in establishing title insurance profit margins.

19. The appropriate allocation of income and expenses related to out-of-state title insurance premiums in multi-state transactions (so-called "blended rates").

20. The appropriate reporting and allocation of income and expenses for ratemaking purposes generally, including possible modifications to the annual statistical plans' instructions to help enhance reporting consistency and accuracy.

Commissioner's Policies

The Commissioner's policies regarding the setting of rates for title insurance provided for under Texas Insurance Code, Chapter 2703 are set out below. This policy statement is not intended to limit the type of evidence a party may offer at the hearing. The pertinent Commissioner's policies are as follows:

1. Evidence to be considered.

It is the Commissioner's policy to consider all relevant evidence and issues in making a determination of rates. To ensure a complete record, the Commissioner shall take official notice of:

Commissioner's Order 06-1280 dated December 12, 2006, and entitled "In the Matter of the 2004 Texas Title Insurance Biennial Rate Hearing Docket Number 2601."

Commissioner's Order 04-0405 dated April 23, 2004, and entitled "In the Matter of the 2002 Texas Title Insurance Biennial Rate Hearing Docket Number 2538."

Commissioner's Order 02-0901 dated August 23, 2002, and entitled "In the Matter of the 2000 Texas Title Insurance Biennial Rate Hearing Docket Number 2471."

Commissioner's Order 00-0534 dated May 15, 2000, and entitled "In the Matter of the 1998 Texas Title Insurance Biennial Rate Hearing Docket Number 2394."

Commissioner's Order 98-0620 dated May 27, 1998, and entitled "In the Matter of the 1996 Texas Title Insurance Biennial Rate Hearing Docket Number 2279."

The 1986 report of the Title Insurance Advisory Committee.

The United States Government Accountability Office Report to the Ranking Member, Committee on Financial Services, House of Representatives, dated April 2007, and entitled "Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers."

Texas Department of Insurance reports for Calendar Year 1997, Calendar Year 1998, Calendar Year 1999, Calendar Year 2000, Calendar Year 2001, Calendar Year 2002, Calendar Year 2003, Calendar Year 2004, and Calendar Year 2005, and entitled "Texas Title Insurance Agents Statistical Report."

Texas Department of Insurance reports for Calendar Year 1997, Calendar Year 1998, Calendar Years 1999-2002, Calendar Years 1999-2003, Calendar Years 1999-2004, Calendar Years 2001-2005, and entitled "State of Texas Title Insurance Experience Report."

2. Parties to be admitted to ratemaking hearing.

Anyone who wishes to participate in the hearing as a party for the ratemaking phase must file a motion for admission as a party by 5:00 p.m. on July 16, 2007, with the Chief Clerk's Office.

3. Purposes of pre-hearing conferences.

An initial pre-hearing conference will be held before the General Counsel of the Department at 10:00 a.m. on July 27, 2007, in room 102 of the first floor of the William P. Hobby, Jr. State Office Building located at 333 Guadalupe Street in Austin, Texas. The pre-hearing conference will be held for the following purposes:

to rule on motions for admission of parties to the ratemaking phase; and

to schedule the submission of pre-filed testimony, briefs, and other items; and

to address other matters that may simplify the proceedings.

Subsequent pre-hearing conferences will be scheduled as necessary to consider other matters as may aid in the simplification of the proceedings.

4. Conduct expected at hearing.

Each page of any exhibit offered in evidence at a hearing before the Commissioner, including prefiled testimony, must be on 8 1/2" by 11" paper, numbered consecutively at the center of the bottom margin, and three-hole-punched along the left margin. The front page of each exhibit must indicate that the exhibit will be part of the record of a public hearing before the Commissioner and must identify the subject of the hearing, the docket number, the date of the hearing, and the party offering the exhibit. On the front page, the party offering the exhibit must also describe the exhibit and leave a space for numbering the exhibit. For example:

Public Hearing before the Department of Insurance

Subject of Hearing:

Docket No. xxxx

Date: _____

Party: _____

Exhibit # _____

Description of Exhibit _____

Parties offering exhibits into evidence at the hearing should be prepared with sufficient copies of each proposed exhibit to furnish the following:

the original exhibit, which will be tendered to the Commissioner for marking and retention for the official record, after which the attorneys shall use an exact photocopy of such marked exhibit in the examination of the witness; and

one copy each for every other party admitted to the hearing; and

six paper copies to be filed with the Office of Chief Clerk; and

one electronic copy to be filed with the Office of Chief Clerk.

Testimony and exhibits accompanying testimony from the parties' witnesses, including their underlying work papers, must be submitted and made available in both paper and electronic format compatible and accessible by a computer using the Windows XP operating system and Microsoft Office software. Parameters, assumptions, and references to underlying data should be identifiable in the electronic exhibits. All information submitted in electronic format to the Office of the Chief Clerk shall be submitted in a format that does not require the use of passwords or other security measures for accessibility and utilization by the Department.

5. Deadlines subject to change.

All deadlines in this notice are subject to change at the Commissioner's discretion to the extent permitted by statute and rule.

TRD-200702699
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 27, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of SRI ADMINISTRATORS, INC. to SEVEN CORNERS, INC., a FOREIGN third party administrator. The home office is INDIANAPOLIS, INDIANA.

Application to change the name of HEALTHNOW CONTRACTOR SERVICES, INC. to BROKERAGE CONCEPTS, INC., a FOREIGN third party administrator. The home office is BUFFALO, NEW YORK.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200702672
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 27, 2007

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Texas Department of Licensing and Regulation

Vacancy on the Board of Boiler Rules

The Texas Department of Licensing and Regulation announces a vacancy on the Board of Boiler Rules established by Texas Health and Safety Code, Chapter 755. The pertinent rules may be found in 16 TAC §65.65. The purpose of the Board of Boiler Rules is to advise the Texas Commission of Licensing and Regulation in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of three members representing persons who own or use boilers in this state; three members representing companies that insure boilers in this state; one member representing boiler manufacturers or installers; one member representing organizations that repair or alter boilers in this state; and one member representing a labor union. Members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year. This announcement is for the position of a manufacturer or installer of boilers in this state.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email tamala.fletcher@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200702574
William H. Kuntz
Executive Director
Texas Department of Licensing and Regulation
Filed: June 21, 2007

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Texas Lottery Commission

Instant Game Number 769 "Joker's Wild"

1.0 Name and Style of Game.

A. The name of Instant Game No. 769 is "JOKER'S WILD". The play style for this game is "add up with 2X and 4x win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 769 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 769.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, 2 CARD SYMBOL, JOKER CARD SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000, $5,000, and $50,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 769 - 1.2D

PLAY SYMBOL	CAPTION
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO
JOKER CARD SYMBOL	JKR
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU

E. Retailer Validation Code--Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 769 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize--A prize of $50.00, $100, or $500.

I. High-Tier Prize--A prize of $1,000, $5,000, or $50,000.

J. Bar Code--A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 (thirteen) digit number consisting of the three (3) digit game number (769), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 769-0000001-001.

L. Pack--A pack of "JOKER'S WILD" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures; the State Lottery Act (Texas Government Code, Chapter 466); and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "JOKER'S WILD" Instant Game No. 769 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules; these Game Procedures; and the requirements set out on the back of each instant ticket. A prize winner in the "JOKER'S WILD" Instant Game is determined once the latex on the ticket is scratched off to expose 72 (seventy-two) Play Symbols. If a player reveals 2 of a kind play symbols within a hand, the player wins the prize shown for that hand. If a player reveals 3 of a kind play symbols within a hand, the player wins DOUBLE the prize shown for that hand. If a player reveals 4 of a kind play symbols within a hand, the player wins 4 TIMES the prize shown for that hand. JOKERS ARE WILD. A player may only win one prize per hand. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 72 (seventy-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 72 (seventy-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 72 (seventy-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 72 (seventy-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than two (2) matching non-winning prize symbols will appear on a ticket.

C. No duplicate Hands on a ticket in any order.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The $50,000 prize symbol will appear at least once on every ticket unless otherwise restricted.

F. Only the highest prize paid per Hand.

G. No Hand will contain five (5) matching play symbols or four (4) matching play symbols and the "joker" play symbol.

H. No more than one (1) "joker" (WILD) play symbol in a Hand.

I. With regard to "jokers" (WILD) play symbols, no Hand will contain 2 pairs, straights (in any order), or a full house.

J. No Hand will contain 2 pairs, straights (in any order), or a full house.

2.3 Procedure for Claiming Prizes.

A. To claim a "JOKER'S WILD" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JOKER'S WILD" Instant Game prize of $1,000, $5,000, or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JOKER'S WILD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "JOKER'S WILD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "JOKER'S WILD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 769. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 769 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	544,000	7.50
$10	272,000	15.00
$15	108,800	37.50
$20	108,800	37.50
$50	54,400	75.00
$100	8,738	466.93
$500	680	6,000.00
$1,000	170	24,000.00
$5,000	34	120,000.00
$50,000	7	582,857.14

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 769 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 769; the State Lottery Act (Texas Government Code, Chapter 466); applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401; and all final decisions of the Executive Director.

TRD-200702678
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 27, 2007

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Instant Game Number 778 "Lucky 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 778 is "LUCKY 7'S". The play style is "three in a line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 778 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 778.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $3.00, $5.00, $7.00, $11.00, $17.00, $20.00, $27.00, $47.00, $77.00, $100, $177 or $1,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 778 - 1.2D

PLAY SYMBOL	CAPTION
2	
3	
4	
5	
6	
7	
8	
9	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$7.00	SEVEN$
$11.00	ELEVEN
$17.00	SVNTN
$20.00	TWENTY
$27.00	TWY SVN
$47.00	FRY SVN
$77.00	SVY SVN
$100	ONE HUND
$177	ONSVSN
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 778 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
SVN	$7.00
ELV	$11.00
SVT	$17.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $7.00, $11.00, $17.00 or $20.00.

H. Mid-Tier Prize - A prize of $27.00, $47.00, $77.00, $100 or $177.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (778), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 778-0000001-001.

L. Pack - A pack of "LUCKY 7'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY 7'S" Instant Game No. 778 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals three (3) 7's play symbols in any one row, column or diagonal, the player wins prize shown in PRIZE BOX. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain 3 or more of a kind other than the 7 symbol.

C. A ticket may only win once.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7'S" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $7.00, $11.00, $17.00, $20.00, $27.00, $47.00, $77.00, $100 or $177, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $27.00, $47.00, $77.00, $100 or $177, ticket. In the event

the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY 7'S" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 778. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 778 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,344,000	7.50
$2	537,600	18.75
$3	134,400	75.00
$5	67,200	150.00
$7	67,200	150.00
$11	33,600	300.00
$17	33,600	300.00
$20	16,800	600.00
$27	6,300	1,600.00
$47	4,620	2,181.82
$77	2,940	3,428.57
$100	2,100	4,800.00
$177	840	12,000.00
$1,000	168	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.48. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 778 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 778, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200702634
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 25, 2007

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Instant Game Number 804 "Diamond Mine"

1.0 Name and Style of Game.

A. The name of Instant Game No. 804 is "DIAMOND MINE". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 804 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 804.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, PICK SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 or $25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 804 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
PICK SYMBOL	WINX10
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWOHUND
$2,000	TWOTHOU
$25,000	25THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 804 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $2,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (804), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 804-0000001-001.

L. Pack - A pack of "DIAMOND MINE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DIAMOND MINE" Instant Game No. 804 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DIAMOND MINE" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If the player reveals a "pick" symbol, the player wins 10 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork

on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. There is no relation between the position of a ticket in a pack and its status (winner or non-winner).

B. Adjacent non-winning tickets within a pack will not have identical patterns. Two tickets have identical patterns if and only if they have the same symbols in the same positions.

C. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.

D. At least one (1) $2,000 prize symbol and one (1) $25,000 prize symbol will be displayed on all tickets unless otherwise restricted by the prize structure.

E. There will be no more than two (2) identical non-winning prize symbols.

F. The non-winning YOUR NUMBER symbols will be unique.

G. The two (2) WINNING NUMBER symbols will be unique.

H. The prize amount associated with a non-winning YOUR NUMBER position will never have the same numerical value as the corresponding YOUR NUMBER.

I. Non-winning prize symbols will not match winning prize symbols.

J. On tickets that win two (2) or more times (excluding the play spots winning with PICK (10X) symbol), each WINNING NUMBER will be used to create winners.

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND MINE" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DIAMOND MINE" Instant Game prize of $2,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DIAMOND MINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DIAMOND MINE" Instant Game, the Texas Lottery shall deliver to an

adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "DIAMOND MINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 804. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 804 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	623,040	11.36
$4	594,720	11.90
$5	56,640	125.00
$10	113,280	62.50
$20	84,960	83.33
$50	23,600	300.00
$200	4,425	1,600.00
$2,000	49	144,489.80
$25,000	12	590,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 804 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 804, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200702636

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 25, 2007

♦ ♦ ♦

Instant Game Number 831 "John Wayne™" "The Duke™"

1.0 Name and Style of Game.

A. The name of Instant Game No. 831 is "JOHN WAYNE™" "THE DUKE™". The play style is "key number match with doubler.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 831 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 831.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, HORSE SHOE SYMBOL, HAT SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $1,000, $50,000, and MERCH SYMBOL.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 831 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
HORSE SHOE SYMBOL	DBL

HAT SYMBOL	WINALL
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONEHUND
$1,000	ONETHOU
$50,000	50 THOU
MERCH	PACK

E. Retailer Validation Code--Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 831 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize--A prize of $50.00, $100, or Pack.

I. High-Tier Prize--A prize of $1,000, $5,000, or $50,000.

J. Bar Code--A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 (thirteen) digit number consisting of the three (3) digit game number (831), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 831-0000001-001.

L. Pack--A pack of "JOHN WAYNE™" "THE DUKE™" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures; the State Lottery Act (Texas Government Code, Chapter 466); and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "JOHN WAYNE™" "THE DUKE™" Instant Game No. 831 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules; these Game Procedures; and the requirements set out on the back of each instant ticket. A prize winner in "JOHN WAYNE™" "THE DUKE™" Instant Game is determined once the latex on the ticket is scratched off to expose 43 (forty-three) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "horseshoe" play symbol, the player wins DOUBLE the prize shown for that symbol instantly. If a player reveals a "hat" play symbol, the player wins ALL 20 (twenty) PRIZES shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 43 (forty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 43 (forty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 43 (forty three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 43 (forty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action, or prize structure.

B. The $50,000 top prize symbol will appear on all tickets except as required by the prize structure.

C. There will be no more than three (3) identical non-winning prize symbols.

D. The non-winning YOUR NUMBERS symbols will be unique.

E. The three (3) WINNING NUMBERS symbols will be unique.

F. The prize amount associated with a non-winning YOUR NUMBERS position will never have the same numerical value as the corresponding YOUR NUMBERS.

G. On the ticket that wins with the HAT (WIN ALL) symbol, the HAT (WIN ALL) symbol will only appear on one of the YOUR NUMBERS positions. All other YOUR NUMBERS positions will be non-winning.

H. Winning WINNING NUMBERS positions will be distributed evenly among all possible WINNING NUMBERS positions.

I. Winning YOUR NUMBERS positions will be distributed evenly among all possible YOUR NUMBERS positions.

J. On tickets that win two (2) or more times (excluding the play spots winning with a HORSESHOE (DBL) or a HAT (WIN ALL) symbol), at least two (2) WINNING NUMBERS will be used to create winners.

K. There will be at least three (3) near wins per ticket among YOUR NUMBERS symbols. A near win is a YOUR NUMBERS whose numerical value is plus or minus one (1) point from a WINNING NUMBERS value. Each WINNING NUMBERS must have at least one near win. Each YOUR NUMBERS will not be counted as more than one (1) near win.

2.3 Procedure for Claiming Prizes.

A. To claim a "JOHN WAYNE™" "THE DUKE™" Instant Game prize of $5.00, $10.00, $15.00 $20.00, $50.00, $100, or PACK, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket, provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or PACK ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JOHN WAYNE™" "THE DUKE™" Instant Game prize of $1,000, $5,000, or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presen-

tation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JOHN WAYNE™" "THE DUKE™" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "JOHN WAYNE™" "THE DUKE™" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "JOHN WAYNE™" "THE DUKE™" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 831. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 831 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	672,000	7.50
$10	386,400	13.04
$15	100,800	50.00
$20	67,200	75.00
$50	73,500	68.57
$100	15,918	316.62
PACK	2,385	2,113.21
$1,000	65	77,538.46
$5,000	10	504,000.00
$50,000	6	840,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 831 without advance notice; at which point no further tickets, in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 831, the State Lottery Act (Texas Government Code, Chapter 466); applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401; and all final decisions of the Executive Director.

TRD-200702679
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 27, 2007

♦ ♦ ♦

Notice of Public Hearing

A public hearing to receive public comments regarding proposed repeal of 16 TAC §402.102, relating to Bingo Advisory Committee, proposed new 16 TAC §402.102, relating to Bingo Advisory Committee, and proposed amendments to 16 TAC §402.100, relating to Definitions, will be held on Monday, July 16, 2007, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200702663
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 26, 2007

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Texas State Board of Pharmacy

Request by Drug Manufacturer for Inclusion of a Drug on List of Narrow Therapeutic Index Drugs

On June 22, 2007, Texas State Board of Pharmacy received a letter from Astellas Pharma US, Inc., requesting that all formulations of Prograf be placed into consideration for inclusion on the list of narrow therapeutic index drugs.

This notice is posted in compliance with Senate Bill 625.

TRD-200702670
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 27, 2007

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 22, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34428 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34428.

TRD-200702675
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2007

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 19, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Mega Energy, LP for Retail Electric Provider (REP) Certification, Docket Number 34420 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 13, 2007. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34420.

TRD-200702639
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 2007

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 20, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Prier Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34425 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 13, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34425.

TRD-200702673
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2007

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Notice of Application for Amendment to Certificate of Operating Authority

On June 22, 2007, AT&T Texas filed an application with the Public Utility Commission of Texas (commission) to amend its certificate of operating authority (COA) granted in COA Certificate Number 50005. Applicant intends to reflect a change in service area.

The Application: Application of AT&T Texas for an Amendment to its Certificate of Operating Authority, Docket Number 34430.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 11, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34430.

TRD-200702676
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2007

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 20, 2007, AMA TechTel Communications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60348. Applicant intends to reflect a change in ownership/control.

The Application: Application of AMA TechTel Communications for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34426.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 11, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34426.

TRD-200702674
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2007

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 19, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Everybody's Phone Company for a Service Provider Certificate of Operating Authority, Docket Number 34419 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the areas served by AT&T Texas within the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 11, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34419.

TRD-200702638
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 2007

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 22, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Norstar Telecommunications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 34431 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the geographic area of the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 11, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34431.

TRD-200702677
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2007

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Notice of Application to Amend Certificated Service Area Boundaries in Kendall County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 19, 2007, for an amendment to certificated service area boundaries within Kendall County, Texas.

Docket Style and Number: Application of Bandera Electric Coop., Inc. to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Kendall County. Docket Number 34417.

The Application: Bandera Electric Cooperative, Inc. (BEC) requests a service area boundary amendment to supply power to a proposed apartment complex. The City of Boerne is in full agreement with the territory amendment. The amount of money expected to be expended on new facilities if the application is granted is approximately $6,500.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 13, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34417.

TRD-200702635
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 2007

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Notice of Award of Major Consulting Contract

The Public Utility Commission of Texas (PUCT) announces the award of Contract No. 473-07-00217.

Description of Activities

The Contractor will provide a review, analysis, and assessment of the workforce at the Electric Reliability Council of Texas (ERCOT). The Contractor will undertake, but is not limited to, the following tasks:

- review and evaluate current organizational design and effectiveness;

- review and evaluate current performance measurement goals and achievement, including the appropriateness of the chosen measures;

- review and evaluate current workforce staffing, including staffing levels, staffing mix, and retention and recruitment for non-executive positions;

- review and evaluate ERCOT's use of contract workers, including changes in percentage of the total workforce over time, use in filling professional and non- professional positions, extent to which contracting is planned, and cost compared to employees;

- evaluate whether the current organizational structure and workforce, including the mix of employees and contract workers, are appropriate for ERCOT's mission and responsibilities; and

- recommend specific changes for areas that are not effective, including a timeline by which changes should be accomplished.

Consultant's Name and Business Address

R. W. Beck, Inc.

5806 Mesa Drive, Suite 310

Austin, TX 78731

Contract Value and Term

The total value of the contract will not exceed $125,000. The contract was executed on June 22, 2007 and will expire on PUCT's acceptance of all completed services, which is estimated to be on or about August 31, 2007.

Due Date of Deliverables

The final report and presentation are due on or about August 31, 2007.

TRD-200702654
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 2007

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Notice of Petition Regarding Relocation of Transmission Line Construction

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on June 19, 2007, for interim relocation of a 138-kV transmission line.

Docket Style and Number: Joint Petition of 74 Ranch And Harrison Interest, Ltd., Regarding Transmission Line Construction, Docket Number 34418.

The Application: Applicants seek relief regarding relocation of a 138-kV transmission line on the Applicants' properties as required by the final order in Docket Number 21747. The Applicants request that the construction of a separate set of monopoles for the 138-kV transmission line be postponed at this time and that the 138-kV transmission line be relocated onto the existing poles until such time as the second 345-kV circuit is added. South Texas Electric Cooperative, Inc. (STEC) submitted a letter of confirmation that it does not object to interim relocation of the 138-kV transmission line.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34418.

TRD-200702637
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 2007

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Texas Department of Transportation

Notice of Intent - US 290, Hays and Travis Counties, Texas

Pursuant to 43 TAC §2.5(e)(2), the Texas Department of Transportation (department), in cooperation with the Federal Highway Administration, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project on United States Highway (US) 290 from Ranch to Market (RM) 12 to Farm to Market (FM) 1826 in Hays and Travis counties, Texas.

The EIS will evaluate potential impacts from construction and operation of the project, including, but not limited to, the following: impacts or potential displacements to residents and businesses; detours; air and noise impacts from construction equipment, and operation of the project; water quality impacts from the construction area and from roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains and irrigation canals; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; land use; vegetation; wildlife; and aesthetic and visual resources. There are no known significant impacts to the human environment that would occur as a result of the development of a 6-lane limited access highway from RM 12 to FM 1826. However, the potential to significantly disrupt community cohesion needs to be studied.

The department will consider several alternatives intended to satisfy the identified need and purpose. The alternatives will include the no-build alternative and roadway build alternatives. From RM 12 to FM 1826, US 290 is an undivided 4-lane roadway with no shoulders except where 14-foot turn lanes and 10-foot shoulders have been recently added at various intersections to improve safety. The Capital Area Metropolitan Planning Organization (CAMPO) travel demand model shows the need for a 4-6 lane limited access highway from RM 12 to FM 1826. Therefore, a corridor study, which is included in the CAMPO 2030 Mobility Plan, is ongoing to evaluate the options for improving mobility on US 290 from RM 12 to FM 1826. To date, the corridor study indicates that a 6-lane limited access highway would improve mobility and increase safety. The EIS will include the evaluation of a range of alternative locations for the 6-lane limited access highway and the no action alternative.

The project may require the following approvals by the federal government. It is anticipated that a United States Army Corps of Engineers, Section 404 nationwide permit would be required at several tributary crossings. A Notice of Intent and Storm Water Pollution Prevention Plan would be required to adhere to Environmental Protection Agency, Texas Pollutant Discharge Elimination System as administered by the Texas Commission on Environmental Quality. The actual approvals required may change after the department completes field surveys and selects the alignment for the project.

A scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the need and purpose for the proposed project, to assist in determining the range of alternatives for consideration in the draft EIS, and to comment on methodologies to evaluate alternatives. The department will publish notice that scoping meetings will be held. The notice will be published in newspapers of general circulation in the project area at least 30 days prior to the meetings, and again approximately 10 days prior to the meetings.

The department will complete the procedures for public participation and coordination with other agencies as described in one or both the National Environmental Policy Act and state law. In addition to any scoping meetings, the department will hold a series of meetings to solicit public comment during the environmental review process. They will be held during appropriate phases of the project development process. Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English as well as Spanish. Provision will be made for those with special communication needs, including translation if requested. The department will also send correspondence to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project, which will describe the proposed project and solicit comments. The department invites comments and suggestions from all interested parties to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions should be directed to the department at the address set forth below.

A proposed schedule for completion of the environmental review process is not available.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to Mr. Wesley M. Burford, P. E., Director of Transportation, Planning and Development, Austin District,

Texas Department of Transportation, P.O. Box 15426, Austin, Texas 78761-5426, telephone (512) 832-7000.

TRD-200702590
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 22, 2007

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68- PILOT.

TRD-200702665
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: June 26, 2007

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Workforce Solutions Brazos Valley Board

Notice of Release of Request for Proposal for Administrative Law Legal Services

On June 25, 2007 the Brazos Valley Council of Government and Workforce Solutions, Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Administrative Law Legal Services. The proposal requirements are contained in the RFP which may be obtained at www.bvjobs.org. The WSBVB is seeking one contractor certified in administrative law to provide services to include contract negotiations and legal representation to the WSBVB. The RFP may be viewed and printed from the Internet on www.bvjobs.org.

Due Date

An original and four copies of a written proposal are due to the WSBVB's offices no later than 4:00 p.m. July 25, 2007. No proposals will be accepted after this deadline. Proposals may be sent or hand carried to:

Trish Buck, Program Manager

Workforce Solutions Brazos Valley Board

P.O. Box 4128

3991 East 29th Street

Bryan, Texas 77805

Attention: Legal Services Proposal

Potential respondents may pose written questions concerning this RFP by e-mail by July 10, 2007. Contact Trish Buck, Program Manager, at pbuck@bvcog.org. The contact person for this RFP is Trish Buck (979) 595-2800.

TRD-200702593
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: June 22, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).